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Bank officers

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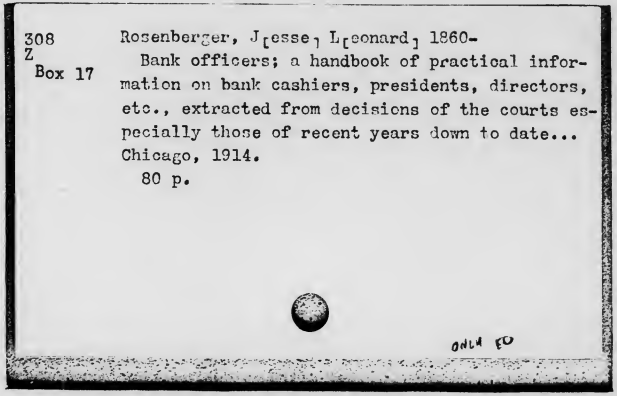

BANK OFFICERS

RIGHTS
POWERS DUTIES
LIABILITIES

PRICE SEVENTY-FIVE CENTS

BANK OFFICERS

A HANDBOOK OF PRACTICAL INFORMATION
ON BANK CASHIERS, PRESIDENTS,
DIRECTORS, ETC., EXTRACTED
FROM DECISIONS OF THE
COURTS ESPECIALLY
THOSE OF RECENT
YEARS DOWN
TO DATE

BY
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Editor of "BUSINESS AID," Etc.

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BANK OFFICERS

I. BANK CASHIERS

The powers and duties, rights and liabilities of bank cashiers, as laid down and reflected in various decisions of the courts, will be considered first.

Then will be shown the course of recent rulings with regard to bank presidents, directors, and bank officers in general.

There are two reasons for following this order. (a) It is the one of practical interest and importance. (b) It is suggested by the nature and amount of material for each subdivision.

The matter contained in this book is virtually what appeared in the magazine BUSINESS AID during the last three and a half years or so down to January, 1914. It has been rearranged according to topics, and to a degree rewritten, but not changed with regard to legal references, which are given or omitted just as was done in the magazine, which for approximately the first half of the period covered did not give them, believing that for the purpose sought to be subserved they were as well, if not better, omitted.

The extent to which such information as is herein contained may be immediately and directly applied does not by any means indicate its full value. Besides furnishing many direct precedents for guidance, it supplies even more principles which should aid in the solution of the business problems which from time to time will arise for which no exact precedent can be found.

It is not enough that banks employ attorneys, even the best to be had. Beyond that, it is almost indispensable that bank officers, and cashiers in particular, should be for themselves as reliably informed as possible as to where they stand legally, and what they should or should not do in a multitude of cases.

In a hundred, or many hundred, transactions a cashier may have no question raised as to his legal powers, when, all at once, he, or his bank, may be called on, before a court, to justify his action. It may not be that the point with reference to which this occurs is more doubtful or difficult than all the others which have been passed over, but that the party making the trouble is looking for any excuse that he can find, or conjure up, to defeat the claims, or rights, of the bank.

Moreover, many important steps have to be taken under circumstances where deliberation or consultation with regard to

them cannot well be had, or when one might not at the time think either necessary. Then the man who has prepared beforehand for just such emergencies, and knows legal principles, has the advantage.

It is also desirable that business men generally should know something of the law governing bank cashiers, as they are the officers with whom customers must transact the most of their business not purely routine, and because, as the Supreme Court of Michigan said, as long ago as 1844, persons dealing with a bank are supposed to know the extent of the powers of a bank cashier.

THE CASHIER'S POSITION

There is a marked distinction, the Supreme Court of Tennessee says, between the cashier of a bank and the cashier of any other corporation.

By law and by the usage of years, the cashier of a bank is regarded as an executive officer by whom the whole moneyed operations of the institution are to be conducted.

Various other courts have referred to the cashier of a bank as its executive, or chief executive, officer, or, in a sense, general manager.

Thus, the Supreme Court of Alabama says, in Montgomery Bank & Trust Co. vs. Walker, 61 Southern Reporter, 951, that the cashier is the chief executive officer of a bank, through whom the financial operations of the bank are conducted.

Likewise, the Supreme Court of Kansas declares, in an 1884 decision, that the cashier is the executive of the financial department of the bank and whatever is to be done, either to receive or pass away the funds of the bank for banking purposes, is done by him or under his direction; he, therefore, directs and represents the bank in the reception and emission of money for banking objects.

The cashier, however, cannot impose, by his action, on the bank, any liability not already imposed by law or usage—cannot bind the bank, in the absence of authority from the directors, by any agreements or contracts outside of the range of his duties.

Again, the Supreme Court of California holds, in McBoyle vs. Union National Bank, 122 Pacific Reporter, 458, that, generally speaking, a bank cashier has greater inherent powers than any other corporate officer.

He has full charge of the bank's personal property, except so far as withdrawn from his control by the bank or by the directors.

But acts which are beyond the scope of the ordinary business

of the bank, that is to say, which call for the exercise of judgment or discretion affecting the policy to be pursued, are to be performed by or under the mandate of the directors, and the sale of property held by the bank for investment or similar purposes is not a part of the ordinary business of a bank.

APPARENT AUTHORITY

If a banking company appoints a person cashier, he has apparent legal authority, the St. Louis (Mo.) Court of Appeals holds, to do whatever bank cashiers are accustomed to do; and those dealing with him may take it for granted that he has such authority, even though, in fact, it has been expressly withheld from him, unless they have reasonable grounds to believe it has been withheld. More than that, numerous authorities favor the proposition, which is palpably sound, that where a corporate officer has been allowed by the directors of the company to pursue a particular line of acts, beyond those belonging to him by virtue of his office, or to wield certain powers not commonly exercised by officials of the same class, this is evidence that such unusual powers were allowed by the directors.

COMPARED TO AN AGENT

But the relation of a cashier to his bank, according to a decision handed down by the Appellate Court of Illinois, on June 28, 1910, is merely that of an employe or agent. He does not represent the bank in any sense other than that in which any agent represents his principal.

Likewise, the Springfield (Mo.) Court of Appeals holds that the cashier of a bank is but the agent of the bank and can bind it only within the scope of his actual or apparent authority.

The Supreme Court of Iowa says, in a decision rendered in October, 1909, that, as a matter of common knowledge, the cashier is ordinarily the active financial manager and agent of the bank. He is the one officer who as a rule is always present during business hours, exercising actual and immediate supervision of its affairs. He is the officer with whom the customers of the bank most frequently come into contact.

According to a decision rendered in 1888, in the absence of a more general authority, the cashier is restricted in his power to bind his bank to the doing of such acts as are usually performed by persons who occupy the position he does. In other words, in the absence of proof of special authority, he must be held to have power to bind the bank only by acts done in the usual and ordinary course of business.

And, in 1906, the court holds that if the cashier of a bank

is permitted to exercise general authority with respect to its business for a considerable time—in other words, is held out to the public as having authority in the premises—the bank is bound by his acts, as in the case of the agent of any other corporation, in the same manner as if the authority were expressly conferred, though, of course, this is on condition that what is done is not ultra vires, or beyond the corporate powers of the bank.

On the other hand, the Supreme Court of Florida cites a United States Circuit Court as saying that it is clearly shown that the powers of the executive officers of banks cannot from the nature of the business in which banks are engaged be always limited by the rules which govern ordinary agencies.

Moreover, an examination of the decided cases, the Supreme Court of Florida says, shows that it is impossible to formulate a definition of the duties of a cashier that will be applicable to all cases.

DERIVATION OF POWERS

A bank cashier is said to have a number of inherent powers.

Besides his inherent powers, he may be authorized to act for the bank, as a text-writer has said, by the organic law, by action of the stockholders, by a vote of the board of directors or their verbal order, by usage and tacit approval, and by necessity or emergency calling for action manifestly to the interest of the bank.

The Supreme Court of the United States has held that evidence of powers habitually exercised by a cashier of a bank, with its knowledge and acquiescence, defines and establishes as to the public those powers, provided that they be such as the directors of the bank may, without violation of its charter, confer on such cashier.

BEING ALLOWED COMPLETE CONTROL

Coming back to the case before it, the Florida court holds that a bank dealing with the cashier of another bank, who is permitted by the directors to have complete control of its business relations with other banks, has a right to trust in the integrity of the cashier of such bank, and transact business with him accordingly, where there is nothing in the known state of affairs of the latter bank, or of the cashier's relation to it, to excite suspicion that he is using his position to the prejudice of his bank.

It was evident from the testimony in this case that the directors of the bank held liable gave to its cashier a very wide

latitude in managing the affairs of the bank. He seemed to have had complete control of its business relations with other banks, and of its mail. No one else seemed to take any interest in these matters. The bookkeeping also seemed to have been entirely under his control. If he used the latitude thus given him to the prejudice of the bank, it would be most unjust, it seems to the court, to make a correspondent bank pay for the negligence of the directors of his bank.

The Supreme Court of Michigan makes an emphatic distinction, with regard to some of the powers of a bank cashier, between cases where the directors hold few meetings and leave practically the entire management of the bank to the cashier, and where the officers of the bank are diligent.

WHEN PERSONALLY INTERESTED IN TRANSACTIONS

Many of the controversies as to what bank cashiers may or should do are produced by transactions by them as individuals with their banks, or by bank transactions in which they have personal interests. It is to be expected that they will more or less frequently have legitimate outside affairs giving rise to transactions which, for convenience or other reason, they will want to conduct with, or at, their banks.

What may they do, and how far may they go, in this regard, and it be binding all around, are the general questions raised. Sometimes the parties with whom the dealings are had, sometimes the banks, and sometimes creditors of the banks raise the questions, depending on who think that they are aggrieved, or wish to set aside the transactions attacked.

AS TO TRANSACTING OWN BUSINESS AT BANK

To begin with, the Supreme Court of Missouri says that an officer of a banking corporation has a perfect right to transact his own business at the bank of which he is an officer.

But it has been well understood from of old, the Supreme Court of Kansas says, that no man can serve two masters. He will hold either to the one or to the other. For a like reason, a cashier cannot serve both himself and the bank in a single transaction, and where he attempts such a perilous thing the person dealing with him is put upon guard as to the extent of his power, and is bound to inquire whether or not the authority claimed really exists.

When it comes to disbursements, a cashier of a bank has a right to dispose of the funds of the bank for the purposes contemplated by its charter. For this his office is a warrant of authority.

USE OF BANK FUNDS TO PAY PRIVATE DEBTS

However, a cashier of a bank cannot absorb the funds of the bank in the satisfaction of his private debts without an express and special authorization. The office of cashier does not import such power.

To be more specific, the cashier of a bank has no implied authority to pay his individual debt by entering the amount of it as a credit upon the passbook of his creditor, who keeps an account with the bank, and permitting the creditor to exhaust such account by checks which are paid, the bank having received nothing of value in the transaction. If the cashier of a bank, without actual authority so to do, undertakes to pay his individual debts in the manner stated, the bank may recover of his creditor the amount of money paid on checks drawn upon the faith of the unauthorized passbook entries.

The fact that a cashier is personally interested in a transaction of the character described is sufficient to put his creditor upon inquiry as to the extent of his power.

It was argued in this case that when a bank places an officer at the window where he transacts his business with the public it in effect tells the world that he is trustworthy and reliable and that he will act within the scope of his authority. But the court says that it does nothing of the kind. Such a declaration would protect a recipient in the enjoyment of a Christmas gift of the entire body of corporate assets. By placing an officer at the window to do its business a bank publishes to the world that he is there to do its business and not his business; that he has no power or authority to do any act outside the legitimate prosecution of the corporate enterprise, and that it will not be bound by any perversion of the corporate funds to his personal use.

SAME AS ANY OTHER DEBTOR

As one indebted to the bank, a 1907 Iowa decision says, a cashier occupies precisely the same attitude as any other debtor. It is for him to pay his obligation in cash, and without the consent and approval of the governing body of the bank he cannot otherwise cancel, satisfy, or change the same.

Most assuredly, he cannot act for himself as debtor and for the bank as its managing agent, and in such double capacity agree that another debtor to the bank shall be substituted in place of himself. This is true in accordance with the general rule that, without express consent, a man cannot in one and the same transaction act for himself and as agent of another; there

being a conflict of interest. In such a case the essential element of mutuality is wholly wanting.

From this it follows that a cashier's act in taking out his own and substituting in place thereof the note of another person that the cashier owns has no force to change the relationship between himself and the bank. Such a change can be legally effected only through the medium of the board of directors, or some duly authorized officer.

Of course, the bank may ratify when the act of the cashier becomes known, but as the transaction is of no force until ratified, the cashier is free in the meantime to make other disposition of the note. Furthermore, a ratification cannot operate retroactively so as to affect or cut off intervening rights.

TRANSACTING BUSINESS WITH ASSISTANT

Something was said in this case about the assistant of the cashier having acted in the transaction for the bank, but that was not sufficient, when he did only what the cashier commanded him to do, and there was no showing that he was possessed of any authority.

ACTING WITH DIRECTOR NO BETTER

Moreover, limitation of a cashier's power to pay his own debts with funds of the bank, or by giving a personal creditor a credit on the books of the bank, is not restricted entirely to cases where he acts alone in the matter. For example, the Supreme Court of Kansas holds that neither the cashier of a national bank, nor a member of the discount board who owns a majority of the stock of the bank and is a director who largely controls its affairs, nor the two conspiring together, can by any device or fraud give away the funds of the bank, or use them to pay the individual debts of either.

USING BANK AS INDORSER

Nor is the cashier of a bank presumed to have power by reason of his official position, according to the Supreme Court of the United States, to bind his bank as an accommodation indorser of his own promissory note. Such a transaction is not within the scope of his general powers; and one who accepts an indorsement of that character, if a contest arises, must prove actual authority before he can recover on the indorsement.

There are no presumptions in favor of such a delegation of power.

The very form of the paper itself carries notice to a purchaser of a possible want of power to make the indorsement,

and is sufficient to put him on his guard. If he fails to avail himself of the notice, and obtain the information which is thus suggested to him, it is his own fault, and, as against an innocent party, he must bear the loss.

DISCOUNTING OF OWN NOTES

With reference to the rights and restrictions of cashiers in transactions in which they have personal interests, the Supreme Court of Wisconsin says that the law is that a cashier cannot bind his bank by discounting his own note. General authority to a bank officer to make discounts does not authorize him to bind the bank by discounting notes to which he is a party. This limitation is absolutely necessary for the protection of the bank and the important interests which are intrusted to it by the business community.

POWER TO BORROW FROM BANK

In another case, the same court says that the cashier is not a legal trustee. He occupies a position of trust and confidence toward his bank, and is held to a high degree of diligence in performing his duties; but he may deal with his bank with the consent of the board of directors or other managing body of the corporation. He may not obtain a preference for himself if the corporation be insolvent, but there is no principle of law which prohibits him from borrowing money of the corporation in good faith while it is a going concern, with the consent of the board of directors.

REAL ESTATE TRANSACTIONS

Here the cashier, with the consent of all the stockholders and directors, bought certain land and became the debtor of the bank for the purchase price. The court does not perceive how the bank itself could afterwards disaffirm the transaction, when all who were interested authorized it with knowledge of the facts, and when it did not appear that the transaction was even unwise.

If the transaction in question was a lawful one when made, it followed necessarily that no trust arose in favor of the bank upon the land.

Neither was there anything in this case rendering the transaction void as to the existing creditors of the bank. Nor was it fraudulent as to subsequent creditors. To be such it must have been entered into with intent to contract debts in the future and to defraud the holders of such debts.

But, in the absence of affirmative evidence of authority

from the directors of a bank to make such a deed, one made by the cashier of the bank to himself as an individual, the Supreme Court of North Dakota holds, is presumptively void, and of no effect.

To the general rule that the acts and contracts of a general agent, within the scope of his powers, are presumed to be lawfully done and made, there is an exception as universal and inflexible, the court says, as the rule. It is that an act done or a contract made with himself by an agent on behalf of his principal is presumed to be, and is, notice of the fact that it is without the scope of his general power, and no one who has notice of its character may safely rely upon it without proof that the agent was expressly and specifically authorized by his principal to do the act or make the contract.

In a late Montana case brought by a state bank on a $1,500 note, the defendant showed that at the time of signing the note he was a partner in a real estate business with the then cashier of the bank and was asked by the latter to sign the note to be used, instead of the cashier's own paper, which, it was explained, the bank did not want and which would not look well to the examiner, but that he (the defendant) would not have to pay the note; that the bank would not hold him responsible. The trial resulted in a judgment in favor of the defendant, but that is reversed by the supreme court of the state, which holds that the promise of the cashier was, on its face, beyond the scope of his authority, and that the defendant was chargeable with notice thereof—holds that the cashier of a bank, by virtue of his office, has no authority to make such an arrangement as that testified to by the defendant, and that whoever accepts such an agreement and acts upon it does so at his peril.

UNNECESSARILY FRIGHTENED

There is little danger of a cashier of a bank knowing too much of the law entering into the transactions which he conducts. In knowing too little of it, if anything, is his danger.

A somewhat peculiar case illustrative of this was, in 1911, before the Supreme Court of Georgia. It was a suit by a bank on a note. One of the defendants had been a cashier of another bank. Another defendant was his father. A third defendant had been a director of such other bank. Their defense was that they had been induced to sign the note by fraud and duress, and that the plaintiff had received the note with notice of the facts relied upon to establish that defense.

More particularly they set up that shortly after the son had resigned his position as cashier, he and his father were brought

together by named officers and agents of the bank, who knowingly and falsely stated to them that he, the son, had violated certain criminal laws of the state regarding banking, in that, being cashier of the bank, he, in connection with the said director, had used money of the bank with which to speculate, referring to a certain store building which had been erected by those two defendants with funds largely borrowed from the bank, but which had in fact been borrowed with the full consent of the board of directors, which consent, with the approval of the loan, had been duly entered on the minutes of the bank.

Continuing the portrayal, the defendants alleged that they were told that the bonding company, which had been surety on the cashier's bond, was liable for all of his shortcomings, and it would only be necessary to turn him over to the bonding company, which would doubtless prosecute him for the alleged felonies he had committed, and even if by any technicality of the law he escaped a just conviction he could never get a place in a bank again, for his record would be tarnished and his business career ruined by exposure of his many "defections."

Then, believing the truth of what they had been told, they were induced, they said, to sign certain notes, of which that in suit was one, upon a promise that, out of professed friendship, there should then be no prosecution.

Was that a good defense to the note? No; the Supreme Court of Georgia does not consider that it was, as it does not consider that the allegations relied upon were sufficient to charge fraud or duress.

OUGHT TO HAVE KNOWN THE LAW

There is no law in Georgia, the court says, which makes it penal merely for an officer of a bank to borrow from his institution, upon the consent and approval of the directors duly entered on the minutes, either for speculation or any other purpose. The facts alleged could not form the basis of a criminal prosecution of any character, or furnish grounds for the arrest of the officer so borrowing the money, nor could they furnish grounds for aspersions against his character. Neither did it appear how they could put him in bad odor with the bonding company.

The defendants, the court goes on to say, were men of experience, dealing at arm's length with the officers of the bank, were charged with notice of the law, bound to know that it was no violation of law or other duty for them to borrow money under the circumstances enumerated, and could not ascribe their act in executing the note to a constrained consent, or to fraud

or duress in a legal sense. The allegations relied upon presented an example of pure threat, without any color of power or authority to make it effective. There was no error in striking out what related to that defense.

PRESUMPTION OF REGULARITY OF ACTS

The presumption, another moderately recent decision says, is in favor of the regularity of the acts done by the cashier of a bank, but that presumption may be overthrown by proof.

RIGHT TO OUTSIDE EARNINGS

The question of the right to the earnings of a cashier outside of banking hours is considered in a suit brought by a national bank, the theory of which the Supreme Court of North Dakota says presupposes the existence of the most extraordinary contract that has ever fallen under its observation. Indeed, the court doubts whether it can be paralleled in the history of Anglo-Saxon jurisprudence.

The cashier, the court says, was alleged to have sold to the bank, not only his time for a year, but every farthing of his earnings during that period from whatever source. It appeared that he had been receiving a salary of $1,500 a year, that the board of directors favored a reduction to $1,200, when, it was claimed, in consideration of receiving his old salary, he entered into this most astonishing agreement not only to devote all his time to the business of the bank, but also to account to it for all his earnings, in whatsoever way they might be acquired.

The bank's suit was on this alleged contract, it appearing that by transactions in real estate outside of banking hours the cashier had, during the year, made something like $1,456, of which $896 was cash, and the balance in notes, for none of which he had accounted to the bank.

UNPRECEDENTED CONTRACT FOR SERVICES CONSTRUED

But when such an unprecedented contract, creating, while it continues in existence, a condition akin to human slavery, is claimed to have been made, the court must exact very clear proof thereof. That requirement this case fell very far short of meeting. Taking all the evidence together, and construing it fairly in the light of known business usages, the court thinks that it amounted to no more than this: That the cashier should have no right to complain if the bank exacted of him exceptional labors in its banking business; that he would give the bank all his time and energies in the endeavor to make profit for the bank, however long might be the hours of work required, and

without reference to the fact that the demands on him might be unreasonable, in view of the work required of their cashiers by other banks. There was no evidence to support a verdict in favor of the bank in this suit.

A contract to give all of one's time to the employer does not mean that outside earnings of the employe are to belong to the employer. The servant cannot devote himself to his own business at the expense of his master without violating his contract. But his personal earnings are his own.

SELLING LANDS AS AGENT FOR THIRD PARTIES

There was no evidence in this case that the cashier neglected his duties as cashier, in the performance of the work in which his outside earnings were made. The work performed by him was such as a banking corporation is not authorized to engage in. It consisted principally of the sale of lands by him as agent for third persons. A national bank has no right to engage in such business.

Under the contract, as testified to by the president of the bank, the cashier could not engage in a banking business, over the bank's counter, for his own profit. The earnings of such work would belong to the bank, not by reason of any special contract for earnings, but because they would be the earnings of the bank itself, the cashier being under obligations, through his contract, to give the bank all his time—not to set himself up as a rival banker while actually engaged in the bank's work.

What the only witness who spoke of earnings probably meant was that the cashier was to give the bank the benefit of his whole time in and about the legitimate business of the bank. The court does not think that he intended to say that it was understood that if the cashier, in spare moments, wrote a book, or taught a night school, or sang in a church choir, the fruits of his extra toil on his own behalf should be swept into the tills of the bank.

No notice is taken by the court of the fact that the cashier used for some of his correspondence bank stationery, and signed some of his letters with the word "cashier," or the abbreviation "Ca," after his name.

IMPUTABILITY OF KNOWLEDGE TO BANK

The question frequently arises as to whether certain knowledge possessed by the cashier of a bank will be imputed to the bank, especially when the knowledge was acquired by him in a capacity in which he had a separate personal interest.

It is a general rule that notice of a fact acquired by an

agent while transacting the business of his principal is notice to his principal, and this rule applies to banking and other corporations as well as to individuals. But the reason of the rule, the Supreme Court of Missouri says, ceases when the agent acts for himself, and not for his principal, and the rule itself ought not to apply in such a case.

Where an officer of a bank, as for example a cashier, transacts his own business at the bank, as it has already been stated that this court holds he has a perfect right to do, in such a transaction his interest is adverse to the bank and he represents himself and not the bank. And the law is settled that, when an officer of a corporation is dealing with it in his individual interest, the corporation is not chargeable with his uncommunicated knowledge of facts derogatory to his title to the property which is the subject of the transaction.

In the elucidation of the same point, the Supreme Court of South Dakota says that the authorities recognize a marked distinction between cases where a cashier not only acts for himself, but also as such cashier, and cases where the person, though cashier, acts for himself only, or for an outside firm of which he is a member, and the bank is represented in the transaction by other officers. In the latter cases the knowledge of the cashier is not imputed to the bank.

WHEN PARTNER IN OUTSIDE FIRM

So, where a partner in an outside firm sells to a bank of which he is a cashier a note belonging to the firm and the bank acts wholly through its discount committee, of which the cashier is not a member, the bank is not affected by knowledge possessed by him, but not communicated, of infirmities in the note.

It cannot be successfully contended, it is held in the Alabama case of Scott vs. Choctaw Bank, 59 Southern Reporter, 184, that, because the cashier of a bank, as a partner of a seller of a note to the bank, was charged with notice of the manner in which the seller acquired the note, the bank, which had no connection with such seller, was charged with such notice, simply because such seller's partner was its cashier. The notice which the law imputed to the cashier, as a partner of the seller, was not imputable to him as the cashier of the bank, it not appearing that he had any knowledge of the existence of the note until it was acquired by the bank, or of the alleged fraud affecting it.

WHEN OFFICER OF ANOTHER CORPORATION

A Kentucky case, where a bank sought to hold the directors of a corporation personally liable, under the statute of that

state, for incurring an indebtedness in excess of its charter limitation, it appeared that one of the directors of the corporation, who was at the same time its president and general manager, was also the cashier of the bank. In consequence of this, it was contended that the bank was charged with notice of the limitation in the charter of the corporation, as well as with notice that this official was violating it. But the Court of Appeals of Kentucky holds that that was not so.

The court says that the man's position as agent of the bank would impute knowledge to it which he possessed only upon reasonable presumption that he would divulge to it his knowledge. His dual position rendered it more probable that he would not disclose his knowledge in this instance. His personal interest was contrary to that of the bank; he was actually deceiving it, it seemed, in the transaction. But, whether he was actively misleading the bank or not, it was contrary to probability that he would have divulged to it matter within his knowledge which if divulged would have prevented the consummation of his transaction with it. Therefore the presumption did not obtain that he did impart his knowledge to the bank. Presumptions of a fact are based upon probabilities, not improbabilities.

WHEN IN CHARGE OF LIQUIDATING BANK

After a bank had closed its doors and the directors had appointed a man to take charge of its accounts and bills receivable, the cashier continued in charge of the banking house and books of the bank, attending to the correspondence, making some collections, and still signing as cashier such checks as were issued in the name of the bank. Then a question arose as to the extent of his power and whether the bank would be bound by information acquired by him. This was in a suit brought by the bank to recover a debt which the defendant claimed had been compromised and settled by the party given charge of the accounts, with knowledge thereof on the part of the cashier.

The evidence showed that the cashier was not only a director and the cashier of the bank, but, on the facts of the case, its general agent. The bank was in the process of liquidation, and he had all the power and authority, not only of a cashier, technically so considered, but very much more power. He was in general charge of all the affairs of the bank, with full authority to manage and control the same, in the process of liquidation.

The Supreme Court of Mississippi holds that, on the facts of this case, the knowledge of the cashier, who had very much more than the mere technical power usually exercised by a cashier, was clearly the knowledge of the bank, within any correct

statement of the rule on this subject to be found in the books, so that his knowledge of the transaction with the defendant was imputable to the bank.

The bank was bound by his action.

KNOWING CONDITIONAL CHARACTER OF NOTE

An applicant for life insurance, subject to the passing of a physical examination and acceptance by the company, gave to the agent a negotiable note for the first year's premium, with the understanding that the note was to be returned if the application was rejected, which was known to the cashier of a bank, who heard all the conversation between the parties and was familiar with the methods of the insurance agent and of the company. Shortly afterward, or within 10 days, the cashier, as the executive officer of the bank, discounted the note for the agent.

The Supreme Court of North Dakota holds, in Citizens' State Bank of Lankin vs. Garceau, 134 Northwestern Reporter, 882, that, under the circumstances, the bank was charged with knowledge of the facts of which its cashier had knowledge or notice, so that it was not a holder in due course, and its action in taking the instrument amounted to bad faith.

The general rule is that a bank is charged with notice of the facts of which its cashier has notice or knowledge, exceptions to the rule arising in the case of his dealings with the bank in his own interest, when it is adverse to that of the bank, or where so long a time has elapsed since he acquired knowledge of the transaction that when the negotiation takes place his knowledge on the subject is not fresh in mind.

That the delivery of the note was conditional, or that the title of the payee was defective, might be shown by circumstances, without any express words to that effect.

IN TAKING DEEDS FROM AN INSOLVENT

A cashier took from a clearly insolvent customer deeds to all his real estate of actual value less than the amount he owed the bank. By agreement the deeds were not to be recorded, but to be held as security for a note given for the amount owed the bank. When the grantor sold some of the property, he was permitted to make his own deeds and to receive back the corresponding deeds from the bank on the application of the proceeds of sale to the bank's indebtedness. About five years after the deeds were given to the cashier, the two remaining ones were placed on record, which was less than four months from the date that an involuntary petition in bankruptcy was filed against the grantor.

The cashier, a United States District Court in Ohio holds, was chargeable with knowledge of the insolvent condition of the grantor at the time these deeds were made, and whatever knowledge, actual or constructive, the cashier had was chargeable to the bank. It also holds that the preference, manifestly attempted in behalf of the bank, should be referred for date to the time of filing the deeds, and that the deeds must be held void as preferences.

DEALING WITH DEBTS

The collection of debts due a bank, the Supreme Court of California says, in McBoyle vs. Union National Bank, 122 Pacific Reporter, 458, is clearly a part of its ordinary business, and hence such collection, together with any acts incidental or necessary to such collection, may properly be carried on by the cashier under his inherent authority.

The Supreme Court of Iowa also says that it has been held that the cashier of a bank may compromise a debt due the bank; may institute suits and attachment proceedings in the name of the bank; may employ an attorney to bring suit; and may take such other measures as are reasonably adequate to obtain the collection of accounts or debts due the bank.

But the Supreme Court of Michigan quotes, apparently with some approval, from one of the briefs in a case, that a cashier of a bank has no legal authority by virtue of his position to compromise a claim of the bank, nor to execute a composition agreement and release therefor.

Neither has a cashier as such power to accept stocks and bonds in payments of notes due the bank.

Equally the cashier has no inherent power, the Supreme Court of Alabama holds, in Montgomery Bank & Trust Co. vs. Walker, 61 Southern Reporter, 951, to pledge the assets of the bank for the payment of an antecedent debt. He may dispose of the bank's negotiable securities in the regular course of business, but he cannot pledge its assets for the payment of an antecedent debt.

And where a merchant, for and in consideration of a sum certain in the bill of sale expressed, sells and conveys his stock of goods to a bank in satisfaction of his pre-existing indebtedness to the bank, with covenants of warranty against the claims and demands of all others, it is held in the Oklahoma case of Farmers' National Bank of Durant vs. Ardmore Wholesale Grocery Co., 127 Pacific Reporter, 1071, that oral evidence is inadmissible to prove, in an action by a creditor, that the cashier of the bank had agreed with the merchant prior to the execution of the bill of sale to pay the debt sued for.

The cashier of a bank has no implied authority, as a matter of law, the Court of Civil Appeals of Texas holds, in Youngberg vs. El Paso Brick Co., 155 Southwestern Reporter, 715, to make a binding agreement for the bank to indemnify and hold another harmless from the claims of a third party.

GUARANTEEING LOAN TO PAY BAD DEBT TO BANK

In a Georgia case, a national bank loaned to one of its customers, a company, an amount greater than 10 per cent of the bank's unimpaired capital stock and surplus, in violation of the federal statute. The cashier of the bank, who was also secretary and treasurer of the company, notified another party of the situation, stating that the only way the bank could extend any further credit to the company was by procuring a loan from him, to be secured by the bank, and induced him to lend the company $15,000, upon the guaranty by himself (the cashier) individually, and by the bank through him, of the payment of the company's notes for the amount borrowed.

The Supreme Court of Georgia holds (1) that a national bank cannot ratify such an act; and (2) that the fact that the cashier's object in making statements to the lender to induce him to make the loan was to procure to the bank the payment of what was due it, and to relieve himself from liability for making an excessive loan, as also the fact that the bank received $11,640.02 of the $15,000 borrowed, did not prevent it from setting up the invalidity of the guaranty on its part.

A DIFFERENT RULING

In a Missouri case, a man in the "grain" line, or trying to woo fortune through puts and calls on the grain market, or betting on the future price of grain, became indebted to a bank for some $65,000, the cashier of the bank apparently being jointly interested with him in some of his deals. Thereafter the cashier took this man with him to the bank's correspondent in another city, and arranged what was practically a loan of $20,000 to reduce the man's account, the loan being secured by certain collaterals and the bank's guaranty executed by the cashier.

The Supreme Court of Missouri holds, in Third National Bank of St. Louis vs. St. Charles Savings Bank, 149 Southwestern Reporter, 495, that while, under the strict terms of the guaranty (and looking no further), the bank was neither loaning money nor receiving money in the ordinary course of banking business, but was lending its credit for the accommodation

of another through the unauthorized act of its cashier, the facts made this a typical case in which to apply the principles underlying an action for money had and received (by the bank).

May a defendant, the court asks, repudiate the negotiations of its cashier bringing to it such a windfall (with one hand) and at the same time (with the other) clutch the gains? May it take the gift and repudiate the hand fetching it? May it take as principal and deny the agency? To so hold would be bad law and worse morals. Even the red Indian has an adage: You should not call the forest that sheltered you shrubbery. To say of one that he drank of a spring and then turned his back on it, or climbed by a ladder and then struck it down, is but to speak the bitter proverbs of the fireside against ingratitude.

To somewhat similar effect, the Supreme Court of Iowa holds, in a 1909 decision, that a bank cannot be heard to deny the authority of its cashier while receiving and retaining the benefits of a contract made by him as its representative, as, for example, his agreement for the reconveyance, on payment of a certain sum within a specified time, of property deeded to the bank in a settlement.

BINDING AGREEMENT WITH SURETIES

The Supreme Court of Iowa further holds that, in the absence of a special restriction known to the party with whom he deals, the apparent scope of the general power and authority of a bank cashier is broad enough to cover an agreement with the sureties on a note to proceed to make the debt, if practicable, out of land of the principal debtor pointed out by them, and if, by such agreement they are lulled into a feeling of security, and led to give over into the hands of the bank the instituting and prosecution of the action against the principal debtor, then, to the extent of the injury they sustain by their reliance upon the conduct and representations of the cashier, they will be entitled to defend against the bank's demand against them on the note.

MAY MAKE AFFIDAVITS AND AUTHENTICATE CLAIMS

In a case where a bank filed against the estate of a man who had died a claim on notes aggregating $3,011.50, the administrator of the estate, desirous of defeating the claim, objected, for one thing, to the sufficiency of its authentication by the cashier of the bank. This was in the form of an affidavit by the cashier attached to the claim, wherein the cashier stated that he was such and authorized to make the affidavit, described the notes and stated that they were just, due, and unpaid, the sum due, and that there were no offsets, credits or payments due on the same.

In holding the cashier's affidavit to be a substantial compliance with the requirements of the Texas statute, the Court of Civil Appeals of that state says that the bank was a corporation; therefore could make no affidavit, except by its officer, whose act was the act of the bank. The cashier had conducted the transaction for the bank, was cognizant of all the facts, and the law, under these circumstances, would consider the affidavit as made by the owner. Had the cashier exceeded his power, or made an insufficient affidavit, the bank might not have recovered judgment for the amount due it.

DEALING WITH COLLATERALS

A Missouri statute provides that the cashier of a bank shall have no power to indorse, sell, pledge or hypothecate any notes, bonds or other obligations received by the bank for money loaned, until such power has been given him by the board of directors, in a regular meeting of the board of which a written record has been kept. But his authority to make loans and take collateral security therefor, and his duty in disposing of the collateral when the debt to the bank is paid, the Springfield (Mo.) Court of Appeals holds, is not affected by the statute. As to these matters, he clearly has authority to bind the bank in the absence of notice to the party dealing with him of a want of such authority.

Loaning money and taking collateral security therefor, and returning to the owner the collateral when the debt secured by it is paid, is an everyday occurrence in the banking business, and as to all the ordinary business of the bank the cashier is the executive arm of its board of directors, and may bind the bank by his acts.

In the case before the court a bank held a $1,500 note and deed of trust upon real estate as security for a loan of $700. Other parties made an additional loan on the same collateral, and the cashier indorsed a statement on the back of their note and contract to the effect that the bank recognized same as a second incumbrance on the property thereby pledged and agreed to turn over and deliver said property to the holder of such second note when the $700 note due the bank should be paid.

Upon the payment to the bank of its debt, it was the duty of the cashier in charge of the bank's assets and collaterals to return the $1,500 note and deed of trust to the pledgor, or, in case of a transfer of his interest therein and notice to the bank, to deliver it to the then owner, and for a failure to perform that duty the bank would be liable.

It was not necessary for the cashier to execute the sup-

posed contract of the bank as indorsed upon the back of the note and contract referred to, in order to fasten upon the bank the duty to return to the proper party the collateral held by it. That duty became fixed when the collateral was deposited with it, and the indorsement of the cashier added nothing to it. The only purpose his indorsement could serve was to charge the bank with notice of the change of ownership, and that notice—not the supposed contract signed by the cashier—fixed upon the bank the duty to return the collateral to the second pledgees when the debt to the bank was paid.

Where a national bank has bought stock pledged to it, its duty is to dispose of such stock as soon as a sale can, to proper advantage, be made, and the Supreme Court of California holds the resale of such stock may properly be regarded as one of the steps taken in the process of collection, a part of the ordinary business of the bank, within the powers of the cashier.

POWER TO EXECUTE COMMERCIAL PAPER.

With regard to the execution of paper, the Supreme Court of Wisconsin decided, back in 1861, following a New York case, that, even where there was a statutory provision requiring that the contracts, notes and bills of a banking association should be signed by its president, or vice president, and cashier, that a note was properly executed by the cashier alone, the statute applying only to agreements where both parties became obligated and to notes and bills issued for circulation as money. It adopted the view that negotiable bills, notes, drafts and other instruments of that nature are good if executed by the cashier or other agent properly designated and authorized for that purpose.

MAY EXECUTE NOTES FOR BORROWED MONEY

A year later the same court held that it was competent for the cashier of a bank, as agent for the board of directors to execute a promissory note for money borrowed to use in its business.

And the Supreme Court of Florida holds that a cashier has the inherent power to borrow money on behalf of his bank, and may bind the bank by a promissory note executed therefor.

DRAWING OF DRAFTS ON CORRESPONDENT BANKS

A bank cashier has implied authority, the Appellate Court of Illinois holds, to draw drafts on correspondent banks. Of course, his actual authority is limited to transactions in the interest of the bank, but because of his apparent authority he binds the bank, for example, by a bearer draft, whether the draft is sold to a customer or utilized for his own purposes.

It is also immaterial whether such a draft is made expressly payable to bearer, or to a known individual intended by the cashier not to have any interest therein and whose name is subsequently indorsed by the cashier for his own purposes.

Money paid on such an instrument to an innocent purchaser under such an indorsement cannot be recovered, because, while the indorsement is in a sense a forgery, nevertheless, the nominal payee is not the actual payee, the actual payee being the bearer, because the bank, through its cashier, intended to make the instrument payable not in name but in fact to bearer. The intention of the cashier is the intention of the drawer within the rule that an instrument made payable to a fictitious person is payable to bearer.

NEGOTIATION AND TRANSFER OF PAPER

That the cashier of a bank may negotiate and transfer, on behalf of the bank, negotiable paper owned by it, the Supreme Court of California says, in McBoyle vs. Union National Bank, 122 Pacific Reporter, 458, is universally held.

But a cashier of a bank has no authority by virtue of his office, the Supreme Court of Iowa holds, in an 1888 case, to pay a depositor by transferring notes to him; and, in the absence of special authority in the cashier to make such transfer, the depositor will be regarded as holding the notes, or their proceeds, in trust for the bank, when garnisheed by its creditors. The court does not think that bank depositors are usually paid in that manner.

ACCEPTANCE OF WORTHLESS CHECKS

Likewise, in a 1904 decision, the court holds that a cashier of a bank has no right or authority to accept a worthless check on another bank, and charge his bank with the amount thereof.

DUTY AND PRESUMPTION AS TO PROTESTING PAPER

In the absence of any showing that it was not the custom of the cashier of a particular bank to attend to the protesting of paper and the giving of notice of dishonor, the Court of Appeals of Kentucky holds, in First National Bank of Louisville vs. Bickel, 156 Southwestern Reporter, 856, that the court must presume that it was the duty of the cashier of that bank to have discharged that duty in respect to certain notes, it being usual and customary for the cashier of a bank to look after matters of this kind. Nor did the fact that the indorser was an officer of the bank relieve the bank from the necessity of giving him notice.

CONSIDERATION FOR INDORSEMENT

A cashier's liability to his bank under the state law for permitting a borrower to incur an excessive indebtedness to it, a United States Circuit Court of Appeals holds, is a sufficient consideration to support his promise to pay that indebtedness to the bank, and is sufficient to support his indorsement of notes given therefor.

SUFFICIENCY OF INDORSEMENTS

The Supreme Court of Wisconsin, in 1870, had a case involving a note for $1,005.19, payable to Wadsworth, Adams & Co., which was indorsed by the payees and by "Geo. Buckley, Cas." It holds that the latter indorsement must be treated as one by Buckley in his official character as cashier, binding upon the bank.

Authorities abundantly show, the court says, that it is not necessary that the indorsement should be in the name of the corporation, but that an indorsement by the cashier of a bank, adding the suffix "Cashier," or "Cash'r, or "Cr.," or "Cash.," will be regarded as an official indorsement.

Moreover, the bank may be effectually liable although the indorsement be an accommodation one for the benefit of the payee. This is held upon the principle that, as the cashier is the person authorized to indorse notes for the bank, a purchaser of such paper in good faith before maturity is not bound, when he takes it thus properly indorsed, to inquire whether the bank owned it when it was indorsed, or not.

In this case the purchasers of the note in question applied to the cashier, Buckley, to know if his indorsement was genuine, and asked if "it was all right," and were told it was. "Perhaps the law would not impose the duty on the purchasers of inquiring of the cashier, before purchasing the note, whether it was all right; but the fact that they did exercise that diligence could not weaken their case.

INFORMATION GIVEN AWAY FROM BANK

Of even more interest is the fact that it was objected that this information was not sought of the cashier while at the counter in the bank in Elkhorn, but when he was in Milwaukee. But, to quote the court, what earthly difference could that make? Suppose the parties had seen him on the street in Elkhorn, or on the steps of the bank building, and made this inquiry in regard to the paper. Can it be seriously claimed that they would have no right to rely upon his representations in respect to his indorsement, unless made by him while standing at the counter?

It well might be that an officer might decline to answer such inquiries when away from the bank, without its books before him to refresh his recollection. But certainly if he does undertake to give the information when away from the bank, a party about purchasing a note indorsed by him would have the right to rely upon the representations which the cashier might make in regard to the nature and character of the indorsement.

On the other hand, nearly two decades later, when an assistant cashier was inquired of, in another place than that where his bank was located, with reference to a party's financial condition, the same court holds that, the bank having no business with the person making the inquiry at the time, and the assistant cashier not being at the time transacting any business for it, his statement, although it induced the party making inquiry to grant a credit, did not bind the bank, the assistant cashier not acting at the time within the scope of his authority as assistant cashier of the bank.

USURPING FUNCTIONS OF DISCOUNT COMMITTEE

The Supreme Court of Michigan holds, in a case where the bank had a discount committee which met almost daily and was at all times accessible to the cashier, and there was nothing to show that any unusual powers had been conferred upon him, that, under such circumstances, the cashier could not bind the bank by a compromise agreement with an indorser whereby he should be released from a portion of his liability.

The Supreme Court of Appeals of West Virginia says, in case of First National Bank vs. Company, that the stockholders of a bank intrust the lending of its money and the management of its affairs to a board of directors, and, if the bank's charter does not authorize the cashier to lend its funds, he can derive his authority to do so only from the board of directors, who must act collectively, and as a body, and who are not, individually, by virtue of their office, the several agents of the bank.

A cashier has no authority, simply by virtue of his office, to bind his bank by an agreement made with the indorsers on a promissory note, and unknown to the directors, to the effect that each of said indorsers shall be liable only for a certain proportion of the debt. It matters not whether such contract relates to original notes presented for discount, or to notes taken either in payment, or in renewal, of pre-existing notes.

If indorsers have been deceived by trusting too much to the authority of the cashier, they may properly be said to have voluntarily taken the risk in relying upon the cashier's assumption of power, and they must suffer the consequences resulting

from their failure to make further inquiry into his authority. The stockholders of the bank should not be made to suffer because of the unwarranted assumption of power on the part of the cashier.

PRESUMPTION ON PRESENTING NOTE FOR DISCOUNT

When an ordinary person presents for discount, before maturity, a note made by himself and indorsed by the payee, the Supreme Court of Pennsylvania holds that the bank has the right to rely upon the presumption that he is the owner of the paper, and that the payee is an accommodation indorser, and it may pay the money to the party in possession of the note, or credit it to his account with safety. But, where a cashier of a bank presents such paper to his own institution for discount, and the payee and indorser is a depositor of the bank, who has been in the habit of doing business with it, the possession of the note by the cashier raises no presumption that he is the owner of the paper; on the contrary, the presumption is that it has been handed to him for the purpose of discount for the depositor's credit.

CHECKS AND DRAFTS DRAWN FOR OWN BENEFIT

Although the cashier of a bank may have authority to draw checks in the name of the bank in the course of the bank's business, the Supreme Court of Missouri, Division No. 2, holds that no authority is to be implied to draw checks in the name of the bank for his private use and benefit. True, the checks in the case before the court, that of the St. Charles Savings Bank vs. Edwards and others, 147 Southwestern Reporter, 978, were not payable to the cashier, and did not show on their face that they were drawn for his use, and doubtless an innocent indorsee for value could collect from the bank, but the checks were drawn for his use, and of this fact the defendants had actual knowledge. With this knowledge they accepted the checks in payment of his individual debt. They did that at their peril, taking the risk of his authority to so draw and use the checks of his principal. Nor had they a right to go on the presumption that he paid the bank for the checks and that he acted honestly. The case could not be settled by presumptions. The burden was upon them to show that these special contracts were authorized, or that the bank had received full value. An agent cannot act both for his principal and himself in a transaction wherein their interests are antagonistic.

Drafts, drawn by the cashier of a bank against its account with a correspondent, in favor of one having knowledge that he

is exercising his authority as cashier or agent in favor of himself as principal, the St. Louis Court of Appeals holds, are presumptively void, and the obtaining by such person of the money on them is presumptively illegal, the burden being on him to overthrow such presumption. The court holds, St. Charles Savings Bank vs. Orthwein Investment Co., 140 Southwestern Reporter, 921, that no implied authority in a cashier to issue drafts for his own benefit can arise from the general course of business in the bank. Neither can the bank become bound by his acts in issuing such drafts, because of the careless trustfulness of the directors, or of their neglect of duty. Nor by their having sanctioned the issuance by him of other drafts than those in question.

DRAWING CHECKS ON OUTSIDE COMPANY

It may be well to record here, too, the decision of the Supreme Court of North Dakota to the effect that, if a cashier has misappropriated funds of the bank, and, for the purpose of covering up the shortage until such time as he expects to be able to replace the amount, draws checks of a company of which he is treasurer, payable to the bank, and charges such checks against the company on the books of the bank, without intention to transfer funds from the company to the bank, but only for the purpose of temporarily concealing his defalcation, such checks will create no liability in favor of the bank against the company.

Similarly, where the cashier of a banking institution has the entire management, control, and conduct of its affairs and stands as sole representative of the bank in all transactions relating to the receipt and disbursement of the funds of depositors, and he, while so acting, draws checks of a company of which he is treasurer, payable to the bank, presents such checks as treasurer to himself as cashier, takes the sum of money paid over thereon and misappropriates it, the bank for which he is acting will be held to a knowledge of his fraudulent purpose at the time of presenting the checks, and cannot base thereon a claim of liability in its favor against such company.

GIVING PERSONAL CHECK TO CUSTOMER

In the fall of 1909, in a case where there was a conversation with the cashier of a bank about a married woman 31 years of age taking a certificate of deposit for a sum of money already in the bank, but the cashier gave her instead his personal check on the bank, the Supreme Court of Wisconsin affirmed a judgment holding the bank liable for the amount. It says that the contractual effect of passing out the check under the cir-

cumstances to an inexperienced woman was at least a matter for the jury. If the cashier intended that the woman should understand that she was making a contract with the bank, and she did so understand, that was sufficient, there being an obvious consideration for such a contract.

Here there was first a valid oral contract between the bank, acting through its cashier, and the woman, for which the cashier without the knowledge or consent of the woman substituted a writing in form and to a person entirely unauthorized. The cashier's check thus never became a contract at all because not assented to, nor even a proposal to contract because not brought to the attention of the other party.

The prior oral contract could be revoked only by mutual consent or discharged by release, or its enforcement prevented by what is termed estoppel. There was neither by the mere retention of the check without knowledge of its contents and under the mistaken impression that it was given pursuant to and represented the prior oral contract of deposit.

DESIGNATED AGENT TO RECEIVE PROCEEDS OF NOTE

In a case that arose in Pennsylvania, where a woman signed a note for $10,000 payable to the order of a bank, at the instance of the cashier, upon the understanding that he was to invest the proceeds for her, which he failed to do, but appropriated them to his own use, the United States Circuit Court of Appeals holds that the woman was liable on the note. It says that, in dealing with the bank with respect to this note, the cashier was the woman's agent, whatever his official position outside of that. The bank having accepted the note for discount, which admittedly was done by the express authority of the directors, was not bound to see that the woman got the money, so long as it was turned over to her accredited agent and so made available to her. The defection came after the bank's participation in the transaction had ended, when the cashier failed to invest the money as he had agreed to—a breach of faith with which the bank had nothing to do, and which the fact that the woman's agent was its cashier in no respect qualified.

EXTENDING NOTES

It has been held that a cashier has no implied authority to extend the time of payment of a note where the effect would be to release a surety. The Supreme Court of Kansas, however, in First National Bank of Olathe vs. Livermore, 133 Pacific Reporter, 734, assumes, without deciding, that, where additional security is taken, the cashier has authority, in virtue of his office,

to extend the time of payment of a note belonging to the bank, even if it results in the release of a surety. Such a transaction would be merely the exchange of one form of security for another.

MAKING REPRESENTATIONS CONTRADICTORY OF NOTES

In an action by a bank upon a note against joint and several makers, the Supreme Court of Oklahoma holds, in Colbert vs. First National Bank of Ardmore, 133 Pacific Reporter, 206, that one of the makers cannot show, for the purpose of escaping liability, a contemporaneous oral agreement that he signed the note upon the representation of the bank's cashier that security taken upon real estate at the time of the execution of the note would be sufficient to pay the note, and that he would not be personally bound by the note, and would not be called upon to pay it, because such statement contradicts the written promise of the note and violates the rule that oral testimony is inadmissible to vary or contradict the terms of a written contract.

TAKING WRONG RENEWAL NOTE

After certain notes on which a company and some of its directors were liable had become due, the cashier of the bank holding the notes agreed to take a renewal note, for the full amount, to be signed by the company and indorsed by the directors, or some of them, and sent a form of note to be executed, which was thereafter changed so as to bind only the company. The note was taken to the bank by one of the directors, who was in a hurry to catch a train and did not call the cashier's attention to the change, and the cashier, after having glanced hurriedly at the signatures, surrendered the old notes, not discovering the true character of the new one for several weeks.

The Supreme Court of Arkansas holds, Frazier vs. State Bank of Decatur, 141 Southwestern Reporter, 941, that the bank was entitled to rescind the contract of renewal and to maintain an action on the original, surrendered notes.

The court says that the question of negligence on the part of the cashier in accepting the new note and surrendering the old ones without examining the former was not involved in the case, for the reason that there was no evidence to the effect that the makers or indorsers of the old notes were injured thereby.

CHANGING DATE OF NOTE

At common law, the alteration of the date of a promissory note is a material alteration; and when made by one not a stranger to the obligation will render it void as to all parties not

consenting to the change. Furthermore, the Court of Errors and Appeals of New Jersey holds, in Bodine vs. Berg, 82 Atlantic Reporter, 901, that when the cashier or general manager of a bank accepts for the bank a promissory note, payable to its order, with surety, in the place of one then held without surety, at the same time surrendering the unsecured note to its maker, and as a part of the transaction of acceptance alters the date of the new note to correspond with that of the note surrendered, the bank is chargeable with the act of its officer as one done in the course of the business of the bank by a general agent, and it cannot, as to the nonconsenting obligors, rely upon the altered note as evidence of the indebtedness, and at the same time disavow the act of its officer and agent and claim his action to be that of a stranger, or beyond his authority. The bank is chargeable with its general manager's knowledge of the fact that it holds a note which has been altered by him, and if, with this knowledge, it accepts payment on account of the note, and subsequently assigns the note as altered, such acts amount to a ratification of the act of the manager in altering the note.

EFFECT OF FILLING OUT NOTE WITHOUT AUTHORITY

A bank taking from the payee a note left blank as to amount, date and time when due, but which its cashier subsequently fills out, the Appellate Court of Illinois holds, is not a holder in due course, within the meaning of the negotiable instruments law, where it fails to show that its cashier had authority of any kind from the maker of the note to so fill out the note.

IDENTIFICATION OF PAPER

On the matter of identification of paper, it may be noted that in a case where a bank was burglarized and it was desired to identify a draft which had been sold to the defendant on the preceding afternoon, the Supreme Court of Nebraska holds that an identification was sufficient where the cashier of the bank testified that she sold a draft to the defendant at the bank shortly before the burglary and that the draft which she produced at the trial was in her handwriting, and was the one which she sold to the defendant.

WHEN MISREPRESENTATIONS BIND BANK

The cashier's office does not carry with it authority for its occupant, the Supreme Court of Nebraska says, to make fraudulent representations. But if such representations are made by a cashier while he is acting for his bank and for its benefit, it cannot escape responsibility, while retaining the fruits of his unlawful conduct.

CANNOT PRESENT NOTES BY TELEPHONE

The Court of Appeals of New York, reversing the decisions of lower courts, holds that no proper presentment of a note was made where the cashier of a bank called up by telephone the maker of the note at his place of residence about two miles distant from the bank and stated to him that the bank held the note, even assuming that the further conversation between the parties was sufficient to establish a demand for payment and refusal or statement of inability on the part of the maker to comply with the demand.

GIVING TELEPHONIC ADVICES AS TO CHECKS

In a Kansas case a depositor of a check for $250, who had received credit therefor subject to check, drew his check for $150 on the bank in favor of a firm to pay for a diamond ring which he desired to purchase of them. A member of the firm communicated with the bank by telephone, informing the cashier of the pending transaction, and asked if the check was good. The cashier replied that the man had on deposit sufficient funds to meet the check, that the check was good, and that it would be all right to let him have the ring. Relying on what the cashier said, the firm sold the ring and took the check in payment of the price. The bank then discovered that the check for which it had given the man credit was fraudulent, and, when the firm presented their check, refused payment. Thereupon the firm sued the bank for the amount of their check, setting up all the facts, but the Supreme Court of Kansas holds, in Rambo vs. First State Bank, 128 Pacific Reporter, 182, that no cause of action was presented so that a demurrer to their petition was properly sustained because, under the negotiable instruments act, the drawee of a bill is not obligated to pay the holder until he accepts the bill, which acceptance must be in writing and signed by the drawee.

In an Oregon case two checks payable to a national bank, drawn on a bank in another town, were marked "O. K. by Tschirgi, Cashier." This was done by the cashier of the national bank, who testified that he called Mr. Tschirgi, the cashier of the other bank, up on the telephone, and, as a result of their conversation, advised Mr. Tschirgi that he would mark the checks O. K. by him and send them for clearance, to which Mr. Tschirgi replied, "All right." The Supreme Court of Oregon holds, in United States National Bank of Vale vs. First Trust & Savings Bank of Brogan, 119 Pacific Reporter, 343, that this did not constitute an acceptance of the checks, as the negotiable instruments law requires that the acceptance of a bill must be in writing and

signed by the drawee. It also says that Mr. Tschirgi, as cashier, was the agent of his bank, and the general rule is that an agent in whom trust or confidence is reposed, or who is required to exercise judgment, may not intrust the performance of his duties to another. Besides, it was incompatible for the cashier of the national bank to act as agent of the other bank in accepting the checks in question.

POWER WHEN NOTARY TO TAKE ACKNOWLEDGMENTS

Where a cashier is also a notary public the question arises as to his power to take acknowledgments of mortgages, etc., in which the bank may be financially interested. Of course, he can take acknowledgments of documents between third parties. But when it comes to taking them where the bank is directly interested, his power, or the effect, is very doubtful.

There are not many decisions on this subject—hardly enough to clear it of practical uncertainty. Probably, too, as in most other matters, the courts of different states would take different views of it, on account of different statutes and perhaps peculiarities of different cases, as well as a conflict of views as to whether the taking of an acknowledgment is a ministerial or judicial act. Indeed, the Supreme Court of Nebraska says that what relationship or what interest possessed by an officer disqualifies him from taking an acknowledgment must be determined from the facts and circumstances of the case in which the question is presented, rather than by any general rule.

In another case that court tells us that it is the established law of many of the states that where the officer taking an acknowledgment of a mortgage has a direct pecuniary or beneficial interest in obtaining the same, he is disqualified thereby, and the acknowledgment is void.

That rule would seem to make the test to be more as to being a stockholder in the bank than being cashier. In fact, the case before the court and its decision suggest the distinction, for the court holds specifically that a cashier, or assistant cashier, who was also a director and stockholder of a national bank, was disqualified, as a notary public, from taking acknowledgment of a mortgage given to secure a note made up, in amount, of $325.45 due the bank, and $490 account of a note held for collection, due another bank in which the national bank was a large stockholder; and that the mortgage was void for want of a legal acknowledgment.

THE CONTROLLING PRINCIPLE

The power of a cashier to take an acknowledgment appears

therefore to be determined, not by any rule with reference to him in particular, but by the general principle that a person is disqualified from taking an acknowledgment as a notary public or other official authorized to take acknowledgments whenever he is a party to, or pecuniarily interested in, the conveyance.

DIFFERENT VIEWS

A different result, however, was reached in May, 1910, by the Supreme Court of Colorado. The contest was between a man named Babbitt and a bank as to the priority of chattel mortgage liens held respectively by them on the same property. The bank held a mortgage prior in date to that held by Babbitt, but the acknowledgment of the bank mortgage was taken before a notary who was at the time the cashier, a stockholder in and a director of the bank corporation. Because of this, Babbitt contended that the acknowledgment was no acknowledgment, and therefore that the bank's mortgage was not entitled to record, was a void instrument and created no lien.

The court decided the case in favor of the bank, but apparently largely on the ground that the taking of the acknowledgment was a ministerial, and not a judicial act, as the taking of an acknowledgment is held to be in some other states. It follows that the decision might not be approved in some states, and a different decision might be rendered on an otherwise quite similar statement of facts. In any case, it would seem better to let some one else take the acknowledgment where the bank is a party, or pecuniarily interested, especially if the cashier is a stockholder.

WHEN THE INSTRUMENT IS FAIR ON ITS FACE

In holding that the bank's mortgage, as acknowledged and certified, was entitled to record, and that the record was constructive notice to Babbitt, the court says that it was to be observed that on its face the mortgage was fair and entitled to record.

The taking of this acknowledgment, unlike that of a married woman, where separate examination is required, was purely ministerial. The alleged infirmity was a matter outside the record, that might not be taken advantage of except for fraud. If there was fraud in fact, of which there was no intimation, it should have been averred and proven.

In the absence of such averment and proof, the record of the mortgage must be held to have been constructive notice to Babbitt. To say otherwise would be to overturn the purpose of the law providing for this notice. Such a policy would destroy

the reliability of records, and lead to mischievous dissensions, rather than to the stability and security of property rights.

Likewise, the Supreme Court of Minnesota has said, where the acknowledgment of a chattel mortgage given to a bank was taken before a notary public who was shown to have been a stockholder and also cashier of the bank, that, undoubtedly, the policy of the law forbids that an acknowledgment should be taken before a party to a deed or mortgage, or one who takes an interest under it, whether as grantee, mortgagee, partner, or trustee; and, when such an interest appears on the face of the instrument, the record will disclose the infirmity, and third parties can take advantage of it.

However, the question was not really involved in this case, for the mortgage was valid under the Minnesota law, as between the parties to it without an acknowledgment; and, as to a subsequent mortgagee, the record was notice because an instrument so acknowledged, not disclosing the alleged disqualification of the notary, would be entitled to record and be notice to him, so that he would be bound by it.

NOT AUTHORIZED TO DEAL WITH LEASES

Although the cashier is regarded in a manner as the executive officer of a bank, it is held in a Missouri case that this pertains only to the current business of such institutions with respect to their financial affairs, such as deposits, discounts, exchange, etc., and he is without implied authority, as a matter of law, to either lease the bank's premises, accept the surrender of a leasehold term, or lease premises of others for it.

CANNOT ACT FOR BANK AS ADMINISTRATOR

Where a right to be appointed administrator of an estate is, under certain circumstances, given by statute to creditors, it is held in the Indiana case of Reed vs. Bishop, 97 Northeastern Reporter, 1023, a cashier of a bank cannot be appointed administrator just because the bank is a creditor; for, if the bank cannot act, its representative or agent will have no more authority to do so.

FAILING TO MAKE RETURN TO ASSESSOR

The failure of a bank to file its statement with the assessor, whatever may be its motive, the Court of Appeals of Kentucky holds, in Caldwell vs. First National Bank, 152 Southwestern Reporter, 757, does not invalidate the assessment of the board of supervisors, if it is a substantial compliance with the law, so as to make a case of omitted property; but a cashier's reason

for not making the statutory return that he is not willing to swear to the market value of the stock is not sufficient reason for his failure to comply with the statute.

GENERAL PERSONAL LIABILITIES

A bank sued the administratrix of the estate of a deceased cashier, asking an accounting and foreclosure of a claimed lien on the stock in the bank and deposit of such cashier. The complaint sought to make the cashier, or rather his estate, liable for many financial losses the bank had sustained during his seven years' administration. All the affairs of the bank, covering that period, were gone into, and where the bank was found to have suffered any loss, and this cashier had had any connection with it, it was sought to charge his estate therewith.

The bank obtained a decree in its favor for $20,347.71, with a declared lien upon the cashier's stock and deposit. But that decree was, in 1910, reversed by the Supreme Court of Aabama, which holds that the stockholders, directors, and officers of the bank must be presumed to have known of and consented to the cashier's course or management of the affairs of the bank, and, in allowing it for seven years, profiting by it—receiving the results and profits during all that time without a whisper of complaint or offer to change it—must be presumed to have ratified it.

The bill of complaint the court says contained equity in so far as it sought to charge the administratrix for an accounting as to the funds or property of the bank, acquired by the cashier as the bank's agent or trustee, whether by breach of contract, express or implied, or whether by breach of duty or trust growing out of such contractural relation, though it amounted to a tort (wrongful act). But it was without equity in so far as it sought to recover of the administratrix, a personal representative, or to fix a liability upon the estate of the cashier, as for damages founded solely upon a tort of the cashier, and in consequence of which his estate was not benefited.

The bill was also without equity, in so far as it attempted to have the court declare and enforce a lien against the deposit of the cashier in its bank.

RESPONSIBILITY FOR LOSSES AND DAMAGES

It is true that the cashier of a bank is responsible to the bank for all losses it suffers directly from his failure in any respect in his official duty, and that it cannot avail him that he was so ordered, or so authorized, to act, by the directors, if the directors had no authority to so order or direct him, or to do the acts themselves which they authorized him to do, and he knew

or ought to have known that the acts done or authorized were unlawful.

The cashier is likewise liable to the bank for all damages it suffers on account of any wrongful official acts of his, from any unauthorized assumption of power on his part, or from his failure to obey any proper and valid instructions from his superior officers in the bank.

But a bank, like any other corporation, can act only by and through its officers and agents, and, if the directors themselves can do an act, so far as they or the bank is concerned, they can authorize the cashier to do it; and if he does it under their authority, he is not liable to them or to the bank, though he might be in some cases liable to third parties.

ERRORS AND IMPROPER ACTS OF SUBORDINATES

The cashier is not liable, as the directors are, for the errors or improper acts of his subordinate officers such as tellers, bookkeepers, etc., or agents in the bank. He is not liable to the bank as their principal. He must have in some way contributed to the wrongful acts of the subordinates to render him liable therefor. He is not required to examine and supervise their every act; but, as to their acts, only to use such care and diligence as an ordinary man would exercise in his own business affairs.

COMPARED TO A TRUSTEE

A cashier is not a trustee in the strict sense of the word, though he is a quasi (sort of) trustee. In his dealings with the public he is the agent of the bank; but as to the bank he is held like a trustee. Yet if he wrongfully acquires the funds of the bank, and invests them in his own name, the bank cannot fasten a trust or lien upon the property, as in the case of a real trustee. The acquisition of the funds being wrong, the trust does not exist. However, his official relation to the bank renders him liable to an accounting to the bank in a court of equity.

BASIS OF LIABILITY

The cashier is liable to the bank only for losses occasioned by his lack of, or failure to exercise, reasonable care and diligence, and not for losses the result of mere errors of judgment.

He is liable for losses the result of negligence or fraud, but not for his dereliction or fault when there is no loss in consequence thereof.

If the directors place upon the cashier the duty of carrying on the business of the bank, and they, as a body, or the committees thereof, fail to hold meetings, or to instruct, direct, or help, and supervise him, absenting themselves from the bank and its business and thus putting the whole burden upon him, neither they nor the bank can hold him responsible for not consulting with them, as required by the by-laws of the bank, as to discounts and loans, though the stockholders might hold him and the directors.

IMPROPER LOANS, DISCOUNTS, OVERDRAFTS

Where the whole duty and responsibility of carrying on the banking business has been intentionally or negligently imposed upon the cashier, he will be liable to the bank for improper loans, discounts, or overdrafts, where he fails to make reasonable inquiry into the financial standing of those making the overdrafts, loans or discounts, or knowingly or negligently fails to take proper security.

NOT AN INSURER

But the cashier is not an insurer against loss in such cases, and is not liable merely because he did not conform to the by-laws of the bank, unless negligent or inexcusable in not so conforming.

The directors of a bank have the power to allow overdrafts, and they can authorize the cashier to allow them, and if he allows them without their authority they can ratify them. They can ratify whatever they can do in the first instance; and they will be held to a ratification of his acts where they impose upon him a duty which they should perform, and fail to object to his course of business when they know, or could easily know, all the facts. They cannot, by neglecting to perform any duties, and imposing all on the cashier, make him an absolute insurer of the bank against all loss, merely because, in order to carry on the business of the bank successfully, he must ignore or fail to observe the by-laws, or fail to confer with them.

Nor is the cashier absolutely liable for an overdraft, if the nature of the transaction is such that it is really a loan on sufficient surety.

BY-LAW LIABILITY

Where a by-law, whose terms the cashier knew, provided that he should be "responsible for all moneys, funds, and valuables of the "bank," the Supreme Court of Wisconsin holds that the by-law became a part of his contract and indicated unmistakably the intent of the corporation to place the whole responsibility for the safe conduct of the bank's business upon the shoulders of the cashier, whether the actual transactions should be carried on by him or by his subordinates.

Whether the cashier was made an insurer, so that he would have to replace funds destroyed by fire or taken by robbery, the court says was a question not involved in the case before it, and hence is not decided. But the court is fully satisfied that the language was intended to, and did, fairly cover losses resulting from mistakes or malfeasance of the cashier or his subordinates.

MISSING MONEY

More particularly, the court holds that where the books of the bank showed that a certain sum of money had been received by the bank which had never been accounted for in the cash, that, in the absence of explanation, was prima facie proof that moneys of the bank to that extent were missing, and that the cashier was liable therefor, and this notwithstanding that on other and different occasions there was more cash in the drawer than the books called for, because unknown customers rather than the cashier must be entitled to credit for the surplus.

"I. O. U." BINDING CASHIER AND NOT BANK

A cashier of a bank signed, with the word "Cashier" following his name, a writing stating, "I. O. U. one thousand dollars on completion of sale" of certain described lots. The District Court of Appeals, Second District, California, holds that the written contract or memorandum in the form of an "I. O. U." could not be said to evidence a contract of the bank when it was examined alone and for what it showed upon its face.

Where in the body of an instrument no words appear which serve to define the agreement as being made on behalf of a party other than he whose signature is attached thereto, it will not be deemed to be the contract of another party, even though there may appear, after the appended signature of the individual, qualifying or descriptive words, such as "President," "Secretary," or, as here, "Cashier." But in such cases oral proof is admissible to identify the party against whom the obligation is legally chargeable.

Moreover, the fact that the "I. O. U." was written upon the back or reverse side of a blank check of the bank was of no significance as evidence to the point that the cashier intended to contract on behalf of the bank and not on his own behalf.

RECEIVING AND RECEIPTING FOR DEPOSITS.

The receipt by the cashier or teller of an individual banker, the Supreme Court of Nevada says, in Eureka County Bank Habeas Corpus Cases, 126 Pacific Reporter, 655, would be the

receipt by the banker in his absence, and the same would be true in regard to a partnership. It might be said that any one of the partners in a banking business would have the right to control and manage the business, the same as any partner in any other business; and that the partner who did not prevent the reception of a deposit, when he knew it was being received by the cashier or teller, would be assenting to the reception of the deposit. But in the case of a banking corporation the receipt by the cashier, or teller, is the receipt by the corporation, and not for the cashier or teller or for an officer of the bank.

A receipt written by the cashier of a bank, stating expressly that a certain amount of money has been received "for safekeeping," the Supreme Judicial Court of Maine holds, in Fogg vs. Tyler, 82 Atlantic Reporter, 1008, tends to prove a special deposit.

CARE OF SPECIAL DEPOSITS

Ordinarily the cashier is guardian of gratuitous special deposits of papers for safekeeping, as well as of the securities and moneys of the bank, but, if the bank has selected him with due regard to the interests entrusted to him, and has not retained him under circumstances condemning it for lack of common prudence in so doing, the risk of the deposit being lost through his defalcation, the Supreme Court of Iowa holds, is that of the depositor.

BANKRUPTCY OF CASHIER PARTNER IN BANK

The president and the cashier of a private bank were equal partners therein. The cashier was permitted to manage the bank and certain other business of the firm as he chose, the result being a considerable loss. Afterward the president sued the cashier for the loss, alleging fraud and mismanagement while acting as partner in a fiduciary capacity or relation.

The cashier pleaded a discharge in bankruptcy.

The president, who had notice of the bankruptcy proceedings, but filed no claim therein, relied on section 17 of the bankruptcy act, which provides that a discharge shall release a bankrupt from all his provable debts, except those which were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

However, it is said that partners and bankers, like agents, factors, and commissionmen, do not usually act in a fiduciary capacity, and the Supreme Court of Kansas holds, in Inge vs. Stillwell, 127 Pacific Reporter, 527, that the cashier's discharge in bankruptcy was a good defense, the relation between partners,

under the circumstances indicated, not being the fiduciary relation referred to in section 17 of the bankruptcy act.

The court says that the president, according to his own theory, paid practically no attention to the affairs of the bank, and, in the absence of a finding of fraud, that section of the bankruptcy act could not be applied; and, even if his theory be taken that the loss was occasioned by the fraudulent conduct and mismanagement of the cashier, the fiduciary relationship required by the statute did not, according to the authorities, appear to have existed.

The president voluntarily entered into the partnership and permitted its affairs to be conducted by the cashier as he chose, and, had his peculiar methods resulted in a gain, one-half thereof would have inured to the benefit of the president, and, by the same rule, one-half the loss should fall on him by reason of the partnership relation, and not from any fiduciary consideration.

RESPONSIBILITY FOR FALSE REPORTS

The principal question in the case of State vs. Cutts, 133 Pacific Reporter, 115, was whether or not a cashier of a state bank, who merely signs a false report which has been prepared in full in typewritten form, except the signature, by others of their own volition and not under his supervision, can be legally convicted for the making of such report. The Supreme Court of Idaho holds that he can be, under the Idaho statute; that a cashier who signs such a report and delivers it to another person makes the report in contemplation of the statute.

Where a cashier of a state bank signs a paper purporting to show the condition of such bank, knowing what it contains, he knowingly makes such report, and should be held responsible for the truth of the statements therein, unless he was himself deceived through no fault or negligence on his part.

It is not sufficient for a cashier of a state bank to offer as a defense to the making of a false report that he signed it at the request of a superior officer, without any actual knowledge as to the truth of the statements made in such report, and without making any investigation himself to determine whether or not such statements were true. Every person is responsible to the law for the rectitude of his own acts, and it is no defense to plead that a criminal statute was violated at the request of another, even under tempting circumstances.

CHARGEABLE WITH KNOWLEDGE OF BOOKS

The cashier of a bank, a United States Circuit Court of Appeals holds, in Pearce vs. United States, 192 Federal Reporter, 561, is chargeable as such with knowledge of the books of the bank.

And, in the above Idaho case, the court holds that, while the defendant in that case objected to the admission of the books of the bank of which he was cashier because no foundation was laid as to their accuracy, their admission was not error, especially inasmuch as it appeared to be clearly established that the defendant participated in the keeping of the books admitted, was an executive officer of the bank of which the books formed a part, and was acquainted with their contents to a considerable extent.

ADMISSIBILITY OF TESTIMONY BASED ON BOOKS

In a suit brought in North Carolina by the Washington Horse Exchange against the firm of Wilson & McCoy, an attachment was levied on the proceeds of a draft, which a Terre Haute, Ind., bank came in and claimed. The cashier of the bank testified that the draft had been purchased for value by it and was its property. On cross examination he admitted that he had no personal knowledge of the transaction, but stated that he had charge of the books of the bank; had examined them; that they showed that the bank had discounted the draft on a certain date and forwarded it for collection, the proceeds being credited to the drawers, and that the bank had never been reimbursed. It was contended that the cashier's evidence was incompetent, and that the books were the only competent evidence, but the Supreme Court of North Carolina holds otherwise, affirming a judgment in favor of the bank. It takes into consideration, too, that the books were in another state, beyond the jurisdiction of the court, and could not well be introduced in evidence without stopping the business of the bank.

RIGHTS ON ASSUMING OVERDRAFT

The drilling of an oil well for a company was conducted in the name of a Mrs. Mahoney, whose uncle, of the name of Mentz, was the treasurer of the company and the cashier of a bank. An account was opened upon the books of the bank in the name of Mrs. Mahoney. It began with an overdraft, and ended with one of something like $5,101.39, to cover which Mentz executed his note for that amount to the bank. That note the bank placed to the credit of the Mahoney overdrawn account.

The Court of Appeals of Kentucky holds, in Mentz's Assignee vs. Mahoney, 150 Southwestern Reporter, 503, that when the bank discovered that its agent had paid out its money for

Mrs. Mahoney without authority, it had the right to ratify the act of its agent, and look to her for the money.

It had also a right to look to its agent for the money, and refuse to have anything to do with Mrs. Mahoney.

Its conduct was an election to follow the latter course, for it squared up the Mahoney account on the books and took the note of Mentz for its debt. The note, therefore, operated as a payment to the bank of the debt.

Mentz was thereafter the debtor of the bank, and Mrs. Mahoney was his debtor, for her account at the bank had been squared. If the bank did not get its money out of Mentz, it had no claim, later, against Mrs. Mahoney. Mentz could sue her for the amount which he allowed her to overdraw at the bank, although he had not, in fact, paid the note.

It was not material that the money was lent in small sums from time to time, and not all at once in one sum. Nor was it material that Mentz, instead of taking Mrs. Mahoney's note, had charged the money to her account in the bank, and had carried it as an overdraft without the knowledge of the officials of the bank who had charge of such matters.

If the cashier of a country bank has to allow small temporary overdrafts by customers, such an overdraft as this one cannot be presumed to be within the authority of a bank cashier.

The bank having elected then to treat Mentz as its debtor and refused to treat Mrs. Mahoney as its debtor, it was not material that it had turned out that Mentz was insolvent.

Nor could it be said that Mentz was a mere volunteer. He was liable to the bank for the money which he had allowed Mrs. Mahoney to overdraw without authority. Being liable to the bank, he had a right to protect himself and his sureties by adjusting the matter with the bank. In so doing he was not a volunteer, but was discharging an obligation which he owed.

MAY RECOVER FROM CUSTOMER FOR OVERPAYMENT

A cashier of a bank, who also acted as bookkeeper, by a mistake in bookkeeping caused a customer of the bank to be credited with $200 to which he was not entitled. The mistake in entry also caused a shortage in cash to appear. The cashier, insisting that some mistake had been made, but being unable to explain the matter satisfactorily, paid the bank the $200, and the bank, on the faith of the false entry, delivered to the customer two shares of stock, of the value of $200. The Court of Appeals of Georgia holds that, in an action in the nature of an action for money had and received, the cashier might recover the $200 of the customer, who took the benefit of the cashier's payment of

that sum to the bank. The court says that the customer ought not to keep the stock without paying for it, and that the cashier was the one he ought to pay.

COMMUNICATIONS NOT SPECIALLY PRIVILEGED

Cashiers of banks, although frequently asked for reports on the character and financial ability of customers and others of whom they may be expected to have special knowledge, have no special protection beyond that afforded by the general law of privileged communications, which permits the making in good faith of defamatory statements about another when made in answer to an inquiry by a person having an interest deemed to entitle him to the information.

In a Kentcuky case the holder of a note to collect it gave it to a firm of bankers who sent it through one bank to another bank, the cashier of which, having presented it for payment, returned it through the bank from which received with an indorsement on it reading: "Never signed a note; fraud, forgery," etc.

It is held that the cashier making such notation was not liable for libel, as his communication was made as corresponding agent and was privileged. The court says that under the custom of bankers in that state it was his duty, as cashier, to report reasons for nonpayment, and he made the report to the parties to whom he was under obligation to make it. The corresponding duty was upon the firm which received the note from the holder to inform their customer of the reasons which the payor of the note gave for its nonpayment.

ENFORCEABLE DISCLOSURES

In a Kansas case decided in 1904, a cashier of a bank had been called before a grand jury and asked what amount of money a certain customer of the bank had on deposit on March 1, 1903, the grand jury being engaged in an inquiry into whether or not such customer had on that date committed perjury in listing his personal property for taxation. The cashier denied the authority of the grand jury to require any officer of the bank to make a disclosure of such matters, and refused to disclose any matters pertaining to the business relations of the bank and its customers and patrons for the reason that the making of such disclosures would be destructive of the bank's property and its assets, and would destroy public confidence in the bank, and for the further reason that all such matters were privileged communications, and that he had no right or authority in law to disclose the relations that were thus privileged, etc.

When, however, counsel for the cashier argued before the

Supreme Court of Kansas that the matter concerning which the cashier was interrogated was privileged, and that to require a disclosure by a banker of the amount standing to a depositor's credit on the bank books would be against public policy, he had to admit that he had found no adjudicated case which sustained his position.

The decision of the court in the case is that it is not against public policy to require a banker to disclose the amount of a depositor's balance; that the transactions between a banker and depositor are not privileged or confidential, in a legal sense. The relation of debtor and creditor exists, the court says, between a bank and depositor. The ordinary debtor would hardly stop to assert a privilege in his behalf to protect himself from disclosing the amount owing by him to another.

CONSTRUCTION OF CERTIFICATE FOR BOND

Certain renewal bonds for a cashier of a bank were each made upon a certificate by the employer which stated that just prior thereto the books and accounts of the cashier "were examined and found correct in every respect and all moneys accounted for." The Supreme Court of the United States holds, in Title Guaranty & Surety Co. vs. Nichols, 32 Supreme Court Reporter, 475, that the certificate was not to be taken as a warranty of the correctness of the accounts. The mere fact that the examination, if made by a reasonably competent person, failed to discover discrepancies covered up by false entries, or other bookkeeping devices, would not defeat the renewal.

CONSTRUCTION OF BONDS

The bond of a cashier of a bank signed by a surety company, the Supreme Court of Indiana holds, in United States Fidelity & Guaranty Co. vs. Poetker, 102 Northeastern Reporter, 372, must be deemed to be an official bond within the meaning of the statute, and the company's liability on it must be measured by the breach of the simple condition that the cashier will honestly and faithfully discharge his duty as cashier of the bank during his continuance in office, rather than according to the numerous and intricate provisions and conditions that may be contained in the bond and the written application for it.

Indemnity bonds given for a money consideration and having all the essential features of insurance contracts, the Supreme Court of Wisconsin holds, in First National Bank of Crandon vs. United States Fidelity & Guaranty Co. of Baltimore, 137 Northwestern Reporter, 742, are not to be construed according to the rules applicable to the ordinary accommodation surety, and

such a bond given on an assistant cashier of a bank is not invalidated by his promotion to cashier, when the bond itself authorizes transfers from one position to another, and the change was one in name only, not affecting the character of the work done.

But a policy of fidelity insurance issued on an assistant cashier of a bank owning five shares of its stock, the Supreme Court of South Dakota holds, does not cover his acts after acquiring a majority of the stock and becoming cashier.

II. BANK PRESIDENTS

Bank presidents, or such a number of them, have of recent years extended their official activities so much that the courts, or some of them, have begun to accord to them corresponding powers, and to hold them to correspondingly increased obligations, when the circumstances seemed to require it.

The president's authority in bank management has been held to be exceeded by that of the cashier, while the Supreme Court of Kansas has said that, in the usual division of duties, to the president it belongs to represent the bank in its collateral business relations. But this is being gradually changed by the enlargement of the president's functions and powers.

This gives increased importance to much that has been hereinbefore set down as having been decided with reference to the powers and duties of bank cashiers, for when the president is given the duties, or sufficiently long exercises functions previously attributed to the cashier, that is, in whole or in part becomes the chief executive of the financial department, he should be held to the same rules therein.

TWO COURTS ON CHANGES IN DUTIES AND POWERS

In a case wherein it sustains the validity of an assignment of a note by the president of a bank, the California Court of Appeal says that, under the usages and customs of modern banking, the president of a bank is no longer regarded as an ornamental magnet with which to attract deposits, but, on the contrary, is now, and has been for several years, recognized as the executive head and most important agent in connection with banking operations. The reason for the rule that through banking usage the president's power must be limited to transactions expressly authorized by the board of directors no longer obtains, and the rule should cease.

A bank president, the Supreme Court of North Dakota says, in McCarty vs. Kepreta, 139 Northwestern Reporter, 992, cannot lend his name, and thereby the influence of his probity and wealth, to his resultant benefit as a stockholder and bank official, without incurring the duty of fulfillment of the obligations of the office.

There is no longer any essential difference in the authority exercised by cashier and president.

AMPLENESS OF AUTHORITY

Where the board of directors of a national bank has by resolution expressly authorized, or for a reasonable length of time permitted, the president of the bank to participate in the actual management of its daily business affairs, the United States Circuit Court of Appeals, Eighth Circuit, holds, in Rankin vs. Tygard, 198 Federal Reporter, 795, that his authority to discount commercial paper and to do other acts within the scope of the authority of its other ministerial officers is ample.

A bank that accepts a note as a result of a transaction in which its president represents it, the Court of Civil Appeals of Texas holds, in First State Bank of Teague vs. Hare, 152 Southwestern Reporter, 501, will be precluded from denying that he was its agent and had authority to represent it.

There is some very respectable authority, too, a United States Circuit Court says, for the proposition that a bank president has at least an implied power to initiate litigation and employ counsel, although the decisions on this point are by no means uniform.

It is not legally necessary, the Supreme Court of Iowa holds, in Ida County Savings Bank vs. Johnston, 136 Northwestern Reporter, 225, that the authority of the president of a bank to make a contract for the sale of land it has acquired by foreclosure, or the ratification thereof, should appear of record on the books of the bank, if there is in fact an authorization or ratification by the board of directors.

RESTRICTIONS ON OFFICE AND POWERS

Subject to the free exercise by its board of directors of its power to remove him at its pleasure at any time, the United States Circuit Court of Appeals, Eighth Circuit, holds, in Rankin vs. Tygard, 198 Federal Reporter, 795, that a national bank may, by its articles of incorporation and by-laws, fix the term of office of its president, or of any other ministerial officer, and the term so fixed becomes his legal term of office, although during that term he is subject to recall by the board under section 5136 of the revised statutes of the United States. Furthermore, the board of directors of a national bank may by a by-law restrict its choice of a president to its own members, even if others are eligible under the national banking law.

The rule that the president of a corporation, by virtue of his office, has no implied power to sell or mortgage property of the corporation, the Supreme Court of Alabama says, in Montgomery Bank & Trust Co. vs. Walker, 61 Southern Reporter,

951, applies to the presidents of banks as well as to the presidents of other corporations, who have no authority other than what is expressly granted by the charter, by-laws, etc.

A Missouri case holds that, although the president of a bank or other corporation may perform the duties incident to the trust reposed in him, including such as custom or necessity has imposed upon his office, without express authority, he is without implied power as a matter of law either to lease the corporation's real estate or to cancel leases it has outstanding with respect thereto, or to enter into new ones for it as lessee.

SUBSEQUENT EXPLANATIONS

The general rule that an agent may not bind his principal by declarations which are merely historical, and which have no connection with any transaction then being conducted by him with authority for his principal, the Court of Appeals of New York applies in State Bank of Brocton vs. Brocton Fruit Juice Co., 102 Northeastern Reporter, 591, an action brought by a bank to foreclose a mortgage on real estate, wherein it holds that declarations of the president of the bank (who represented it in accepting and dealing with the mortgage), made after the mortgage had been placed on record, explaining why it had been withheld from record for a while, were erroneously admitted in evidence, the president at the time of making the statements not being engaged in behalf of the bank in any transaction with which the statements were connected, or to which they were pertinent.

JOINING BANK IN MORTGAGE TO RELEASE LIEN

A bank which needed cash, having a purchase money lien against certain property for $8,000 evidenced by two notes of one Williams for $4,000 each, had Williams apply to an insurance company for a mortgage loan of $4,000, which was to pay off one of the notes. The bank united in the mortgage for the purpose of releasing its lien on the property securing the $4,000 note to be paid off, and for the purpose of subordinating to the company's lien its lien to secure the other note. The mortgage was signed and acknowledged by the bank, by its president, and its corporate seal was affixed thereto.

The Court of Appeals of Kentucky holds, in Citizens' Life Insurance Co. vs. Pedley, Receiver of the Owensboro Savings Bank & Trust Co., 150 Southwestern Reporter, 26, that, inasmuch as the bank's president was not only such in name, but was, in fact, its chief executive officer, who attended to the making of loans, the execution of deeds and mortgages, and releasing liens,

all of which was done for a number of years with the knowledge and acquiesence of the bank and its directors, he had full authority to unite the bank with Williams in the execution of the mortgage referred to, as well as full authority to act for the bank with reference to all other matters connected with the transaction.

If, upon ascertaining that there were additional expenses and additional taxes that must be paid from the loan, and the evidence clearly showed that both the president and the cashier of the bank knew of these items, the bank did not desire to release its lien to that extent, it should have refused to carry out the transaction. It could not accept and retain the proceeds of the mortgage and at the same time repudiate the agreement under which the proceeds were paid.

DRAWING DRAFT AT DISTANT PLACE

The president of a Washington bank, who was authorized to sign its drafts, drew one on its New York correspondent, dated at Billings, O. T., in 1902, for $6,000. The draft was paid in due course, and the question was presented whether, when such a draft, though fraudulent in its inception, is presented for payment through the ordinary banking channels, the bank on which it is drawn, if wholly ignorant of the fraud, is liable if it pays the draft. The United States Circuit Court of Appeals, Second Circuit, holds, in First National Bank of Mt. Vernon, Wash., vs. National Park Bank of New York, 192 Federal Reporter, 546, that it is not liable. To render it liable it must know of the fraud, or the circumstances must be such as to put it upon inquiry.

The fact that the draft in question was upon a blank for the use of the customers of the Billings bank and the fact that it was apparently drawn at Billings were perfectly compatible with honesty, as it is easy to imagine many situations where such a draft would be necessary and proper, as, for example, in the case of the president being sent to settle a controversy or to purchase property for his bank.

NOTICE TO PRESIDENT AS NOTICE TO BANK

Included in the obligations of the office of bank president, the Supreme Court of North Dakota holds, are those arising from the presumed notice imputed to him by law as a bank official of the bank's transactions in the ordinary course of its dealings.

As the presiding officer of the board of directors, he should not be heard to say he did not know matters presumed to be

within the actual knowledge of the board as an excuse for failure to perform his official duties to the bank, its depositors and creditors.

And, as there is no longer any essential difference in the authority exercised by cashier and president, what the cashier knows the institution and its president in law know.

WHEN PRESIDENT THE ONE TO HAVE NOTICE

Where the president of a bank acted for it in the purchase of a note, and, in an action by the bank on the note, testified that at the time of the purchase he did not know of any defects in the making of the note, the District Court of Appeal of California holds, in Citizens' Bank vs. Stewart, 133 Pacific Reporter, 337, that it could not be said that the bank had notice.

The bank could have no notice except through some of its officers.

The officer to whom such notice should and would probably be given, was the one authorized to represent the bank in the purchase of the note.

Or, if any other officer had notice of any equity of the maker of the note, it was reasonable to infer that he would immediately communicate it to the president.

It was therefore fair to say that the president's statement was sufficient evidence that the bank had no notice of any infirmity in the note.

WHEN KNOWLEDGE NOT IMPUTABLE TO BANK

Of course, the Supreme Court of North Dakota adds to what has been quoted from it, where manifestly the president, cashier, or director, the presumed agent of the bank, the principal, is acting for his own interests, and from the nature of the transaction adversely to those of the bank, or in fraud of the bank, for his own personal gain, or for that of others with notice thereof, in a suit by the bank or for its benefit, a different rule applies.

So, according to the Supreme Court of Appeals of Virginia, it was not to be held that the fraud or knowledge of its president would prevent a bank from collecting notes discounted for a loan of $4,500, assuming that, in perpetrating a fraud upon the makers, the president told them, as an inducement to get them to go into his fraudulent scheme, that the bank would let them have $4,500 and not require them to pay it back until he sold certain stock for them and from the proceeds of the sale paid off the notes—that is, if the stock was never sold by the president, then this money was never to be paid back.

Furthermore, it is held in the California case of Cooke vs. Mesmer, 128 Pacific Reporter, 917, that a bank is not bound by information its president had with regard to notes taken by him for the bank as collateral security when the information referred to was acquired before he became president of the bank and was not in his mind when he represented the bank.

OTHER EXAMPLES

A bank is not chargeable with the knowledge of its president, nor liable for his misapplication of trust funds coming into his hands and deposited in the bank without anything to charge it with notice of their character.

So practically holds the Supreme Court of Arkansas in Bank of Hartford vs. McDonald, 154 Southwestern Reporter, 512, a suit on a note for $2,141.66 which its president and two other parties gave to it for a loan to be used in the purchase of property for them on shares to be handled by the president for them.

The court holds that the bank could neither be charged with its president's knowledge, nor be required to perform his agreements.

In this transaction he was a stranger to the bank, although its president; for the law does not allow the president of a bank to make contracts with himself, against the interest of the bank, so as to bind the bank, because the weakness of human nature and the probability of the agent giving himself the advantage of the bargain is recognized.

As the bank did not participate, and was not a beneficiary, in any misappropriation, it did not come within the rule that if a bank learns that a trustee is committing a breach of trust by an improper withdrawal of funds, or participates in the fraud, it is liable, and where a deposit of trust funds is made by a trustee in his own name, with the knowledge of the depositing bank that such deposit is wrongful, the bank is liable upon the trustee's withdrawing and converting the funds.

The Supreme Court of the United States holds in American National Bank of Nashville vs. Miller, Agent of the First National Bank of Macon, 33 Supreme Court Reporter, 883, that where an insolvent president of a bank gave to it, on account of an indebtedness due by him to it, a check on another bank, in which he carried an account, and to which he was also indebted, notice of its president's insolvency was not to be imputed to the bank to which he gave the check, on the ground that what he knew the bank must be considered as knowing.

If, within the scope of his office, he had knowledge of a fact which it was his duty to declare, and not to his interest to

conceal, then his knowledge would be treated as that of the bank, for then he would be presumed to have done what he ought to have done, and to have actually given the information to his principal.

But the fact of his own insolvency and of his personal indebtedness to the bank on which he gave the check being matters which it was to his interest to conceal, the law would not, by a fiction, charge the bank of which he was president with notice of facts which he not only did not disclose, but which he was interested in concealing.

AS PURCHASER OF NOTE FROM BANK

In the case of McCarty vs. Kepreta, 139 Northwestern Reporter, 992, where the president of a state bank, who was also one of the directors of the bank, bought from it a note before its maturity, paying full value for it to the bank, which by its cashier indorsed it to the president as his individual property, the Supreme Court of North Dakota holds that a defense of want of consideration, available to a maker as against a state bank as payee of a negotiable instrument, may be asserted as a defense in an action brought by the bank president against the maker, without proof of actual notice had by such president of the fact that the note was given without consideration, and this without regard to the good faith of the bank president in his purchase of the instrument.

The cashier's actual knowledge of the infirmity in the instrument, of its being without consideration, the law conclusively presumed to have been communicated in due course to, and to have been had by, the board of directors, when no interest hostile to the bank or in fraud of its stockholders or depositors was asserted; and such presumed actual knowledge in its directors was presumed to have been had by the president of the bank as such at the time he purchased the negotiable instrument of the bank, acting by its cashier. Whatever knowledge he, as a director and officer of the bank, at such a time had or ought to have possessed as an official, he would be conclusively presumed in law to have had as a private individual.

Proof of neglect of duty owing by the president to the bank, its stockholders and depositors, and persons dealing therewith, by proof of failure of the president and director to participate in the active management of the bank, and the consequent ignorance of the facts of the transaction in question, did not relieve such official from the knowledge presumed in him, and was immaterial on the question of his good faith in the purchase of such negotiable instrument.

The law governing banking and defining the liability of directors and managing officers in such institutions conclusively negatives the claim that such a managing officer can be, as between himself and the bank, or between himself and third persons, a holder in due course, when his bank is not, or cannot be, such a holder.

SELLING TO BANK NOTES FROM REALTY BUSINESS

In a Minnesota case the president of a national bank engaged in a joint land transaction with one Persall, who agreed to furnish the money for a required cash payment by having his note for $1,600 discounted at the bank. The president, who was the owner of a majority of the stock of the bank and also a member of its discount committee, sold the note to the bank, but apparently failed to use the proceeds as agreed.

In a suit by the bank on the note, wherein is affirmed a judgment in favor of the bank, the Supreme Court of Minnesota holds that, in negotiating the note, the president was acting for Persall and himself jointly, and the bank was not chargeable with knowledge of any facts known only to the president.

The proceeds of the note having been placed to the president's credit, and drawn against by him, the bank was a bona fide holder of the note, as a purchaser, for a valuable consideration in the regular course of business, and it was not required to take any steps to insure the proper application by the president of the proceeds.

On the other hand, the Supreme Court of South Dakota holds, in First National Bank vs. Harvey, 137 Northwestern Reporter, 365, that, where the president of a bank was also engaged in the real estate business, and took a note which the bank claimed to have purchased from him in due course of banking business, the ends of justice should not be defeated by permitting him to divide himself into two beings, one as manager and owner of the land business, and the other as president, director, chairman of the discount committee, and general manager of the bank, and then say that one part of him had no knowledge or notice of what the other part of him knew or did. Whatever knowledge he possessed of the origin of the note must be imputed to the bank.

TRANSFERRING TO BANK NOTE TAKEN BY SELF

A note for $7,500, dated June 20, 1907, was made payable one year after its date to the order of one Dennis, who was president of a bank. August 1, 1907, he transferred the note to the bank. The evidence showed that he conducted the affairs

of the bank. There had been no meeting of the directors during the year 1907. The cashier followed the directions of the president. His testimony with reference to the transfer of the note was that Dennis came into the bank, told him to make certain book entries with respect to this note and other papers, handed him the papers, and then told him to make certain other entries "on the other side" of his book. These instructions were followed.

The Supreme Court of California holds, in McKenney vs. Ellsworth, 132 Pacific Reporter, 75, that, on this testimony, the jury were certainly justified in concluding that the cashier was not, on behalf of the bank, purchasing the note from Dennis, but that he was merely obeying the orders of Dennis, who occupied the dual position of seller of the note and of agent who was consummating the purchase on behalf of the bank. The evidence fully authorized a finding that the bank took the note with notice of every fact known to Dennis.

BANK LIABLE FOR NOTES SOLD BY PRESIDENT

The Supreme Court of Iowa, in Benton County Savings Bank vs. First National Bank, 140 Northwestern Reporter, 811, holds the national bank liable for forged or misrepresented notes sold by its president notwithstanding that it denied all liability on any of the notes for the alleged reasons that the entire transaction was with its president personally, and not with the bank; that it had no notice or knowledge of his negotiations of the notes, and it had no authority as a national bank to indorse, guarantee, or in any manner become responsible upon his notes and papers.

The court mentions as important points that the defendant's representative was not personally acquainted with any of the officers or directors of the plaintiff bank, that the correspondence was begun by a letter signed by him as president; that, until he left the defendant bank, all his correspondence was upon its letter heads; that, as a rule subject to very few exceptions, he signed his letters as president of the bank; that, as a rule, the amount paid by the plaintiff for the notes was passed to the credit of the defendant bank through its correspondent in Chicago and thereafter passed by the president to his personal credit upon the books of the defendant bank without knowledge of the plaintiff or any of its officers, and that it was his custom to handle bank paper in the manner that he did in this case.

It was true, too, that the notes did not have any bank number, but that was by no means controlling, although a circumstance to be considered with others in arriving at the truth.

GETTING NOTE TO MAKE PROPER BALANCE

A discrepancy having been discovered in the amount of the bills receivable of a bank, the president of the bank, who made most of the loans and transacted practically all of the business for and on behalf of the bank, and whose authority to so act was acquiesced in and ratified by the board of directors, got a personal friend, who had been doing considerable business with the bank, to execute a note for $3,500 to the bank, assuring him that he wanted to place it in the bank temporarily, and that when it became due the bank would cancel and return the note to him.

The note was not carried on the books of the bank in any form, as an asset thereof, until after there was a new cashier, who claimed to have found other items of indebtedness due by the maker of the note, in consequence of which the president got a renewal note for $4,800, later executing a paper addressed to the maker stating that the $4,800 note "is not your note, and this bank will not enforce collection of same against you, and when the same is due it will be canceled and delivered over to you."

In holding that the bank could not recover on the note, as there was no consideration for its execution, the Court of Civil Appeals of Texas says, Central Bank & Trust Co. vs. Ford, 152 Southwestern Reporter, 700, that, as reflected by the record, there was no question but that he acted as a representative of the bank and was vested with full power and authority to represent the bank in all matters pertaining to its business.

It might be that the president personally was the one interested in having the bills receivable of the bank to properly balance, but that did not alter the fact that he acted as the representative of the bank in the matter.

No element of estoppel in favor of the bank could possibly exist under the circumstances disclosed.

DEFENSES TO NOTE GIVEN TO DECEIVE EXAMINER

A cashier of a bank fearing that the statute had been violated by making an excessive loan to a coal company, induced the president of the bank, who was inexperienced in the banking business, having been a farmer all of his life, to give his note for $2,295 to be used temporarily to correct the matter.

Assuming, for the sake of the argument, that the note was given for the purpose of deceiving the state bank examiner, the Court of Appeals of Kentucky holds, in First State Bank vs. Morton, 142 Southwestern Reporter, 694, that, in a suit by the bank on the note, the president could plead no consideration, there being no unsatisfied creditors.

The court also holds that the bank ought not to recover for the alleged mismanagement of such president, because the controlling interest in the stock of the bank had been bought for ten per cent of its par value by parties who knew the condition, and undertook to pay the liabilities, of the bank, and to allow the bank to recover anything would amount, in substance, to a recovery by them of the purchase money which they paid to the president for his stock.

TRANSACTION TREATED AS AN OVERDRAFT

A bank president, to help out another bank, undergoing examination by the government, permitted a draft for $6,000 to be drawn on him personally, in favor of such other bank, by a company in intimate relations with it, the company sending its check to him for the amount. The check was worthless, but was deposited with his bank and held for a time, then forwarded for collection, and, when returned, was, by the president's direction, kept in the drawer as a cash item by his bank until it went into the hands of a receiver.

In treating this as part of an overdraft by the president, which he must repay, the United States District Court, in Pennsylvania, holds, in Elliott vs. Peet, 192 Federal Reporter, 699, that, if there was delay in forwarding the check, the president having agreed to it or directed it, he could not assert it to be negligence and lay it upon the shoulders of his bank.

If the transaction was a mere scheme to deceive the government, and was not intended to bind anybody, the president was still liable under the rule that, when a man takes part in such a scheme, he shall make his apparent obligations good if failure to keep them would do others harm.

RIGHT TO SALARY TERMINATED

Nor was the above president entitled to recover for salary after his bank went out of business and he ceased to preside, due to the superior power of the law, for it could not be said that his contract of employment was broken by the bank.

OWN NOTE FOR WHICH BANK'S ACCOUNT A SET-OFF

A president of an Idaho bank having given his note for $5,000 to a correspondent bank in Portland, Ore., to replace his bank's certificate of deposit for that amount and to continue its credit without the use of such a certificate, the United States District Court in Oregon holds, in Kendrick State Bank vs. First National Bank of Portland, 206 Federal Reporter, 940, that the Portland bank was legally authorized to charge off the balance

standing to the credit of the Idaho bank against the note, and thus protect itself to that extent against loss on account of the failure of the Idaho bank.

LIABILITY FOR FALSE REPORTS

The Supreme Court of Minnesota says, in State vs. Sharp, 141 Northwestern Reporter, 526, that the statute of that state makes it a felony for an officer of a bank to withhold any information called for by the superintendent of banks for the purpose of examination and ascertaining the true condition of the bank.

If the president of a bank makes a false report in response to a call made by the superintendent of banks for information upon specific facts, the offense is committed. It is his business to know whether the reports he makes are true or false. He cannot be heard to say that he possessed no knowledge of the truth or falsity of the reports.

The court cannot place so narrow a construction upon this statute as that the offense of withholding information is not committed unless the same is wilfully withheld and that a person cannot be guilty of withholding any information unless he possesses such information.

The statute does not make actual knowledge or criminal intent an essential ingredient of this offense. The gist of the offense is the withholding of information, and the offense is committed if a false report is made in response to a call for true information.

LIABILITY ON INSOLVENCY OF BANK

In the settlement of the affairs of an insolvent bank, the Supreme Court of Appeals of West Virginia holds, in Benedum vs. First Citizens' Bank, 78 Southeastern Reporter, 656, that its president is properly chargeable with the amounts of worthless notes and overdrafts of corporations, promoted and controlled by him and his associates, discounted by the bank with his knowledge, under his direction, and with notice on his part of the financial ability of the makers, inferable from his relation with them and participation in the management and control thereof.

USING LETTER PREPARED BY CASHIER

Is it the law that when the president of a bank signs a letter prepared, say, by the cashier, and incloses in the letter a bundle of instruments or documents furnished by the cashier to be sent as an inclosure with the letter, that the president makes all the recitations in these documents and instruments

his own by merely inclosing them with his letter? And this, too, to fasten actual fraud upon him? If that view is taken of it, an agent of a corporation, the Supreme Court of Missouri says, assumes a liability and responsibility hitherto unhinted at and undreamed of in the philosophy of the law. The court deems the proposition unsound on its face, for the law must comport with reason.

III. BANK DIRECTORS

Bank directors are the constituted managers of incorporated banks. They are elected by the stockholders. Their powers and duties are largely determined by the statutes under which the banks are organized, whether state or national. But these are interpreted and largely augmented by the decisions of the courts.

THINGS INCUMBENT ON BANK DIRECTORS

As a general rule, directors, the Supreme Court of Oregon says, in Devlin vs. Moore, 130 Pacific Reporter, 35, are charged with the duty of reasonable supervision over the affairs of the bank.

It is their duty to use ordinary diligence in ascertaining the condition of its business, and to exercise reasonable control and supervision over its affairs.

They are not insurers or guarantors of the fidelity and proper conduct of the executive officers of the bank and are not responsible for losses resulting from their wrongful acts or omissions, provided they have exercised ordinary care in the discharge of their own duties as directors.

Ordinary care, in this matter, as in other departments of the law, means that degree of care which prudent and diligent men would ordinarily exercise under similar circumstances.

The degree of care required further depends upon the subject to which it is to be applied, and each case must be determined in view of all circumstances of that particular case.

If nothing has come to the knowledge of the directors to awaken suspicion that something is going wrong, ordinary attention to the affairs of the institution is sufficient.

On the other hand, if the directors know, or by the exercise of ordinary care should have known, any facts which would awaken suspicion and put a prudent man on his guard, then a degree of care commensurate with the evil to be avoided is required, and a want of that care makes them responsible.

Directors cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them.

Directors are not expected to watch the routine of every day's business, but they ought to have a general knowledge of the manner in which the bank's business is conducted, and upon what securities its larger lines of credit are given, and generally

to know of, and give direction to, the important and general affairs of the bank.

They are not required to be bookkeepers.

It is incumbent upon bank directors in the exercise of ordinary prudence, and as a part of their general supervision, to cause an examination of the condition and resources of the bank to be made with reasonable frequency.

If a director performs his duty as such in the same manner as such duties are ordinarily performed by all other directors of all other banks of the same city, it cannot be fairly said that he is guilty of gross negligence.

To render directors or other officers of a corporation liable to it for the fraudulent, or wrongful acts of other officers, they must have participated therein, or else they must be chargeable with culpable negligence.

The president, cashier, and other employes of the bank, although selected by the directors, are not the agents or servants of the directors, but of the corporation.

AFTER DELEGATING DETAIL MANAGEMENT

The custom of intrusting, first, to the executive officers of a bank, and, secondly, to the supervision of the executive committee of the board of directors, the detail management of the corporation, such as learning the responsibility of its debtors, or the nature or value of the collateral, the Supreme Court of New York, Appellate Division, says, in Kavanaugh vs. Gould, 131 New York Supplement, 1059, does not relieve the directors generally of all responsibilty.

If the by-laws require monthly meetings, they must make diligent effort to be present thereat.

They must give their best efforts to advance the interest of the corporation, both by advice and by active work on behalf of the corporation when such work may be assigned to them.

If at their meetings, or otherwise, information should come to them of irregularity in the proceedings of the bank, they are bound to take steps to correct those irregularities.

The law has no place for dummy directors.

They are bound generally to use every effort that a prudent business man would use in supervising his own affairs, with the right, however, ordinarily to rely upon the vigilance of the executive committee to ascertain and report any irregularity or improvident acts in its management.

But the directors generally are not chargeable with knowledge of detail management which need be reported only to the executive committee, and are not liable for the negligence of the

members of the executive committee, of whom greater diligence is required, and who are held to a stricter rule of liability.

DUTY AS TO CHARGING OFF LOSSES

All directors who participate in and approve a long-continued carrying on the books, among the loans and discounts, of a line which they know is worthless, and in amount sufficient materially to affect the standing of the bank, the United States Circuit Court of Appeals, Sixth Circuit, holds, in Chesbrough vs. Woodworth, 195 Federal Reporter, 875, are bound to know that under the practice prevailing in the bank such worthless paper will become an element of the published reports, and that these reports will in so far falsely represent to the public the bank's condition; and so, in a fair sense, such directors permit the making of a report which is a violation of the national bank act. Hence it is a director's primary duty, a breach of which causes a violation of the statute, to charge off assets which have become worthless.

This duty to charge off is, it is true, that of the board as an entity; but, when the duty is wholly unperformed by the board, an individual director who is engaged generally in the performance of his functions may, nevertheless, be individually liable because of his participation in the failure to act.

Nor is this duty an absolute one, arising definitely as to each piece of paper the moment its collection becomes impossible.

A failure to charge off a thousand dollar note after the directors know it is uncollectible, and in a bank with a million dollars of assets, could not support an action against a director for loss from the making of a false report.

There must be a reasonable margin of honest discretion as to the amount of paper which the board may carry after it has become presently uncollectible. This will depend upon the state of "undivided profits" account, upon the amount of assets which have been written off, but which are thought to be good, and perhaps upon many other circumstances.

There must also be a reasonable time for consideration after a debtor has become unable to pay, and the directors know his paper is, in a strict sense, then worthless. How much, if any, of this paper should still be carried as an asset and for how long will depend upon his moral character, his prospects for recouping his losses, etc. Here, again, an honest discretion must be used.

Speaking of that duty to unknown persons among the public, the breach of which will support an action, the court cannot make a more accurate formulation than to say that the duty to charge off arises when, and so far as, the directors know they are carrying uncollectible paper beyond that reasonable amount and be-

yond that reasonable time permitted by an honest exercise of their official discretion. In other words, it arises when they know that longer carrying will, through the medium of regular reports or otherwise, normally result in substantially misleading the public as to the net value of the bank's assets.

Whether particular paper is enforceable against the person apparently primarily liable thereon is not controlling of the duty to charge off. The criterion on this part of the whole question is whether the debt is collectible from any one, or will be paid by any one.

FORM AND PROOF OF ACTION BY DIRECTORS

It is well settled, the Supreme Court of Arkansas says, in Merchants' & Farmers' Bank vs. Harris Lumber Co., 146 Southwestern Reporter, 508, that the acts of a corporation which must be done or authorized to be done by its directors must be done or authorized at a meeting at which all of the directors are present or have an opportunity to be present by due notice thereof.

However, there is no special formality to be observed in order to constitute a meeting of the board of directors of a corporation. If all the members of the board are present and participate in the meeting and its proceedings, that is all that is required to make the meeting valid.

The fact that no minute of the meeting is made or recorded will not render invalid any act done or authorized at such meeting which is within its corporate powers. Such authority may be given verbally, and proved by oral evidence.

Moreover, all the shareholders of a corporation may waive the necessity for a meeting of its board of directors, and may, without such meeting, either authorize acts done by its agents within the scope of the powers of the corporation, or ratify those acts which have been done, and by such authorization or ratification bind the corporation itself.

To the same effect, the First Appellate Division of the Supreme Court of New York holds, in Gardiner vs. Bronx National Bank, 142 New York Supplement, 713, that whatever is said by individual members of the board of directors of a bank in desultory conversations at times and places other than at board meetings, is said by such persons as individuals, and not while acting officially, and does not bind the bank.

FOUNDATION REQUIRED FOR ORAL PROOF

If it be sought to show formal action by the directors, the Supreme Court of Georgia says, in Bank of Garfield vs. Clark, 76 Southeastern Reporter, 95, the minutes should be produced or accounted for. If a resolution was in fact passed, but not entered on the minutes, this should be shown. It is not competent, without laying a sufficient foundation therefor, to introduce oral evidence that the directors acted on a certain transaction, or that the corporation "agreed" to a certain thing, where the issue is whether the officers or agents who acted had authority to bind the corporation in the transaction.

DISREGARDING OFFICIAL WARNINGS

In Thomas vs. Taylor, 32 Supreme Court Reporter, 403, the Supreme Court of the United States affirms a judgment for damages against directors of a national bank for attesting a false report which deceived the plaintiff and induced him to purchase stock of the bank on which he was compelled to pay a 100 per cent assessment.

The court says that there is in effect an intentional violation of a statute when one deliberately refuses to examine that which it is his duty to examine.

The defendants had notice from the comptroller of the currency that $194,000 of the items counted as assets of the bank were doubtful and should be collected or charged off. This was a direct warning to them by the bank examiner and comptroller that assets to nearly twice the amount of the capital stock were considered doubtful. They, notwithstanding, represented the assets to be good.

Such disregard of the direction of the officers appointed by the law to examine the affairs of the bank was a violation of the law. Their directions must be observed. Nor could the defendants be acquitted of having knowingly violated the statute on a showing of their relation to the bank and the confidence they had and were justified in having in the statements of certain of its officers, particularly the cashier.

TRANSCENDING POWERS AS TO PROSECUTIONS

If an agent or an officer of a national bank, with or without the consent of its board of directors, commits an act which entirely transcends the scope of its powers and objects of existence, the individuals participating in the act are solely responsible for its consequences, and the national bank is not.

The board of directors and other officers are likewise impotent to ratify any such act, or to make the bank take any benefit therefrom.

For example, neither the directors nor other officers or agents of a national bank have authority, the Court of Appeals of Georgia

holds, in Hansford vs. National Bank of Tifton, 73 Southeastern Reporter, 405, to institute prosecutions for violations of the public criminal laws of the state, nor to cause requisition papers to be issued for alleged criminals.

Such acts are entirely beyond the scope of the powers of a national bank, and liability does not attach against the bank for any attempt on the part of its directors, officers, or agents exercising any such powers on its behalf.

WITHOUT SPECIAL PRIVILEGES AS INDIVIDUALS

Banking institutions, the Court of Appeals of New York says, in People vs. Knapp, 99 Northeastern Reporter, 841, are not created for the benefit of the directors.

While directors have great powers as directors, they have no special privileges as individuals.

They cannot use the assets of the bank for their own benefit, except as permitted by law.

Stringent restrictions are placed about them so that, when acting both for the bank and for one of themselves at the same time, they must keep within certain prescribed lines regarded by the legislature as essential to safety in the banking business.

LOANS TO DIRECTOR'S FIRM SAME AS TO HIM

Hence, when the legislature commands that loans exceeding in the aggregate one-tenth of its capital stock shall not be made by any trust company to any director, "directly or indirectly," it intends to include such transactions as a loan to a firm in which a director of the bank is a partner. It does not mean to limit the prohibition to a director borrowing in his own name simply and not as a member of a firm.

NOT ALLOWED TO OBTAIN PRIORITY OF LIEN

A director of a bank and of a manufacturing company indebted to the bank, the Supreme Court of Wisconsin holds, cannot, with the aid of others, similarly placed, take property upon which the bank has security, turn it back to the debtor company, which they also control, and then take a mortgage on all the property of the latter company and make the several notes secured by this mortgage due at such times that his note will fall due first, and so obtain priority of lien on the returned property, even though he advances money in the transaction.

CREDITOR'S SUIT MUST BE BASED ON DECEIT

Where a creditor of a corporation sues in his own personal right to recover from a director losses which he has sustained by extending credit to the corporation, the Supreme Court of Iowa holds, in United States Fidelity & Guaranty Co. vs. Corning State Savings Bank, 134 Northwestern Reporter, 857, that his action must be founded on deceit, and not upon negligence; it must also ordinarily be brought at law, and not in equity. And where the same person was both an administrator of certain estates and a banker, a legal fiction could not be built up that the banker and the administrator were separate and distinct personalities, so as to say that the administrator was misled by any negligent or affirmative act of the directors of the bank.

WHEN KNOWLEDGE NOT IMPUTABLE TO BANK

There are cases which hold that knowledge of the illegality of a note by a bank director, acting with the board or committee of the bank at the time of the purchase or discount of the note by the bank, is imputable to the bank, while such knowledge by a director who is not present and does not act with the board or committee when the note is purchased or discounted is not imputable to the bank.

If this distinction is sound at all, the United States Circuit Court of Appeals, Third Circuit, does not think that it has any application where the director is transacting business with his bank for himself, and in its transaction fraudulently conceals facts which, if made known to the bank, would defeat his purpose.

And where the president of a bank and another director of it sold to it a note for $50,000, but absented themselves from, and took no part in, the meeting of the discount committee, of which they were members, when the purchase of the note was being considered, the court holds that their knowledge of alleged fraud in the note was not imputable to the bank, otherwise it would be unsafe for any bank at any time to discount paper for, or purchase it from, one of its directors.

The president of a construction company, who was also a member of the board of directors of a trust company, having presented to the trust company an application of two stockholders of the construction company for a loan, the United States Circuit Court of Appeals, Eighth Circuit, holds, in Haskell vs. Columbus Savings & Trust Co., 207 Federal Reporter, 322, that his knowledge that their note was executed subject to a condition that all stockholders of the construction company should advance their pro rata share to the company to enable it to discharge its then pressing indebtedness was not imputable to the trust company, as that would be carrying the doctrine of imputable knowledge and its consequences to an unreasonable and unwarrantable length.

MAKING EXAMINATIONS OF CASHIER'S ACCOUNTS

Where the contract of a bank with a company going on the cashier's bond requires the directors to make examinations of his accounts, the Court of Appeals of Kentucky holds, in United States Fidelity & Guaranty Co. vs. Foster Deposit Bank's Receiver, 156 Southwestern Reporter, 371, that a substantial compliance with the contract, or the exercise of ordinary care on the part of the directors, does not impose on them the duty of making such a thorough, intelligent, and careful examination of the accounts of the bank kept by the cashier as a bank inspector would make, or as would probably be made by a committee of skilled, trained bookkeepers, but the directors are obliged to exercise only that degree of care that ordinarily prudent directors of a bank similarly situated would exercise under like or similar circumstances.

Again the same court holds, in Bank of Hardinsburg & Trust Co. vs. American Bonding Co., 156 Southwestern Reporter, 394, that where officers and directors of a bank obligate themselves to make examinations of the cashier's accounts and dealings with the bank, at stated intervals, they must exercise ordinary care to comply with this obligation on their part by making some character of examination.

They must do something that will satisfy the mind that they have made an honest effort to ascertain the true condition of the bank's affairs at such times.

The court does not attempt to define the character of examination which should be made, but simply holds that, where the directors are under the duty or obligation to make an examination, they must do something more than accept the statement of the cashier himself as to the bank's condition.

AS TO NATIONAL BANK DIRECTORS

The civil liability of national bank directors in respect to the making and publishing of the official reports of the condition of their banks is based upon the duty enjoined by the national bank act, and the rule expressed by the statute is the exclusive rule.

To render a director of a national bank personally liable to a depositor for fraud and deceit practiced by its officers, as at common law, it must be alleged and proved that the director had knowledge of, or approved of, or participated in, the fraudulent act of which complaint is made.

So holds the Supreme Court of Nebraska in Jones National Bank vs. Yates, 139 Northwestern Reporter, 844, where it says that a bank director is guaranteed immunity from liability under the very law that permits him to become a director. As an inducement to him to act in that capacity, the law assures him that he is not to be liable except for that which he knowingly does.

A knowledge must be brought home to the director that he is deceiving the individual wronged, and may thereby occasion a loss to him.

The director is not liable for his own mistakes or blunders, or for the mistakes or blunders of his brother directors; neither is he liable for the frauds and wrongs of the officers of the bank, unless he has personal knowledge thereof, or participates in such fraudulent acts. If it were not so, there would be great difficulty in securing men to assume the position of national bank directors.

It may be that, when one deposits money or takes stock in a bank, thus putting his property in immediate control of other persons, he has a right to expect that the directors, who are supposed to manage the bank, will exercise at least ordinary care and prudence in the management of the bank's affairs; but the degree of care required rests with congress, which has control of the legislation.

LIABILITY FOR FALSE REPORTS

The making and publishing of the reports to the comptroller required by the national bank act, the United States Circuit Court of Appeals, Sixth Circuit, says, in Chesbrough vs. Woodworth, 195 Federal Reporter, 875, are not merely for the information of the comptroller, but are to guide so much of the public as may have occasion to act thereon, and he who buys from another stock in the bank, in reliance upon a false report of its condition, and suffers damage thereby, has a right of action against any officer or director who, knowing its falsity, authorizes such report. The one suffering such damages is within the statutory description of "any other person."

The liability of the directors upon such a subject-matter is several.

The plaintiff may arbitrarily select one as sole defendant or two or more to be joined as defendants. Against each individual selected, a sufficient case must be made out to show that he participated in the act for which a verdict is had; but the plaintiff's reasons for the selection are wholly immaterial.

Such action involves no direct issue of negligence.

The directors are not exonerated solely because they acted in good faith in making loans; nor are they liable merely because they negligently made or permitted to be made reckless or bad loans, or negligently failed to collect loans that were collectible, or because with diligence and care they would have known that loans, reported as assets, were bad. The sole primary issue is

whether they caused or permitted to be made a statement of the bank's condition, upon which statement the plaintiff relied to his injury, and which statement they knew was materially false.

LIABILITY FOR NEGLIGENCE

The relation of the depositors to a bank, growing out of their placing their money with it for safe-keeping, and to be at their convenience drawn out for their use, is such, the Supreme Court of Mississippi says, in Ellis vs. H. P. Gates Mercantile Co., 60 Southern Reporter, 649, that the directors, as the officers charged with the management of the bank, are required to be diligent and careful in conducting the bank's business, and are liable to the depositors for losses sustained by the bank from negligence in performing the duties of their office. It is the duty of a director to know the condition of his bank and to see that its affairs are honestly and properly managed. He cannot shirk this duty and avoid liability.

LIABILITY FOR RECEIPT OF DEPOSITS

A director of a bank who knows its condition and who by his inaction permits or assents to the taking of deposits when the bank is in an insolvent condition, the Supreme Court of Louisiana holds, in State vs. Buhler, 62 Southern Reporter, 145, is guilty of having consented to the receipt by the bank of deposits, as, in order to be guilty of a violation of the law, it is not necessary that such director should have the direct control of the receiving teller and other employes of the bank.

LIABILITY ON BANK ENGAGING IN STOCK SPECULATION

Stock speculation is no part of the business of a national bank. Directors who engage in or knowingly permit it are unfaithful to their trust and are liable, the United States Circuit Court in New York says, for losses thus occasioned. They are chosen as the guardians of the funds of the bank to protect them from forbidden and unlawful uses, and are not permitted to subject them to hazardous and unauthorized risks for their own benefit or for the benefit of others. If they knowingly permit the funds which it is their duty to guard to be plundered, they are liable and must restore the lost property.

RIGHT TO INVOKE ASSISTANCE OF COURT

The directors of an embarrassed bank, the Supreme Court of Appeals of Virginia holds, in Camden vs. Virginia Safe Deposit & Trust Corporation, 78 Southeastern Reporter, 596, should be allowed to file a bill to secure the assistance of a court of

equity to collect the corporation's assets and distribute them equitably among those entitled to them. For one thing, if the assets of the corporation prove inadequate to satisfy its liabilities, the directors are liable to stockholders and creditors for any damages which may accrue by reason of any negligence on their part, and it would seem to be nothing more than just that they should be allowed to come into court and defend themselves by anticipation against any possible charge of neglect of duty as directors, or, if such neglect in fact exists, use all the means at their disposal to repair the consequences of their default to themselves and to others.

REBUILDING WITH FLOORS TO LET

The Supreme Court of the United States dismissed an appeal from a decision affirming a decree dismissing a bill to restrain a national bank, its directors and a contractor employed by them, from pulling down the bank building and erecting a six-story building in its place, the first floor to be used for banking purposes and the other floors to be let for offices.

The court says, case of Wingert vs. First National Bank of Hagerstown, 32 Supreme Court Reporter, 391, that the plaintiff was a holder of stock in the bank and alleged that the intended construction was beyond the corporate powers of the bank and commercially unwise, but the circuit court dismissed his bill on the ground that, in the absence of bad faith, it would not revise the judgment of the majority of the directors on the question of policy, and that a national bank lawfully might turn its building to the best account by adding upper stories for offices to let. The circuit court of appeals affirmed the decree on the opinion of the circuit court.

Pending the litigation the new structure was built. It is now enough to say that the whole case was disposed of by the erection of the new building.

No doubt, after the filing of a bill for an injunction the defendants proceeded at their peril, even though no injunction was issued; but there were no damages for which the plaintiff could make any claim against the corporation for doing as it saw fit with its own, lawfully or unlawfully.

Furthermore, a recovery would be futile. It would cost the plaintiff as much as it brought in.

To transmute the cause of action into a demand for damages against the directors alone would be an essential change, and probably would do the plaintiff no good, as it has been held in well-considered cases that that action also will not lie.

RECEIVER TO RECOVER FOR DERELICTIONS

If a bank has suffered loss on account of the directors having declared dividends contrary to the provisions of the statute, or has suffered loss in consequence of the directors' fraud, gross negligence, or willful breach of duty, after such corporation is placed in the hands of a receiver it is the duty of the reeciver, as the representative of all concerned, the Supreme Court of Idaho holds, in McTamany vs. Day, 128 Pacific Reporter, 563, to proceed and collect such illegal dividends and all other claims of such corporation due said bank by contract or caused by fraud, gross negligence, or willful breach of duty of the officers thereof, so that whatever may be recovered may be properly distributed among all the creditors of the bank as the law or court may direct. If the receiver fails or refuses to do his duty in this regard, that matter ought to be called to the attention of the court, and the court ought to compel him to do so, or remove him.

IV. MISCELLANEOUS

There are a few other decisions which should be noted, wherein the courts refer to bank "officers" as such, rather than to specific officers, or where there are not enough decisions to treat them separately, as with reference to vice presidents.

NOTICE TO OFFICERS AS NOTICE TO BANK

The knowledge acquired by the president, directors, cashier, and tellers of a bank, while engaged in its business in their official capacities, the Supreme Court of Florida holds, in Perry Naval Stores Co. vs. Caswell, 57 Southern Reporter, 660, will be notice to the bank. So far as either has authority to act for the bank, his acts are the acts of the bank; but mere private information, obtained beyond the range of his official functions, will not be deemed notice to the bank.

In an action by a partnership bank on a note of which it was denied that it was an innocent holder without notice of the fraud by which the note was procured, the Supreme Court of Iowa holds, in Bank of Bushnell vs. Buck Bros., 142 Northwestern Reporter, 1004, that the testimony of the president that he had no notice of any defect in the note, or defense against the same, was not conclusive, but notice to any of the other officers of the bank of such infirmity, if any, would be notice to the bank.

The mere fact that an officer of a bank knows of a transaction which he is under no obligation to disclose, and which does not relate to his department, the United States Circuit Court of Appeals holds, in Sturdee vs. Cuba Eastern Railroad Co., 196 Federal Reporter, 211, does not constitute notice to the bank, as when an officer whose connection with a bank does not relate to receiving or crediting deposits himself deposits a check, for himself, account of another party, the bank will not be bound by his knowledge of an assignment of the account.

Nor, according to a decision in Real Estate Trust Co. vs. Company, 191 Federal Reporter, 566, is a bank constructively visited with notice of fraudulent acts which its officer would not naturally disclose to it.

Similarly, the Supreme Court of Appeals of West Virginia holds, in American National Bank of Bluefield vs. Ritz, 74 Southeastern Reporter, 679, that knowledge by one of the officials of

a bank, acquired in a capacity other than as its representative, relating to infirmities in commercial paper offered for discount, is not notice to the bank when that official is also an officer of the corporation seeking the discount and has an interest in the transaction so adverse to the bank that the reasonable presumption is that he would not communicate the knowledge to it.

Again, the same court holds, in City Bank of Wheeling vs. Bryan, 78 Southeastern Reporter, 400, that knowledge of the infirmity of commercial paper, acquired by an officer or director of a bank outside of his official duties, who is personally interested in having the paper discounted, is not attributable to the bank.

Where a bank in good faith loans money to a municipal corporation for a legitimate corporate purpose, and the money so loaned is paid into the municipal treasury and subsequently expended for the purpose stated, the Supreme Court of Minnesota holds, in First National Bank of Goodhue vs. Village of Goodhue, 139 Northwestern Reporter, 599, that recovery may be had against the municipality for a return of the money, though the contract is void because the president of the municipal council is also a managing officer of the bank, and participates in the council proceedings by which the loan is authorized.

Evidence of a conversation with the officers of a bank at the time the notes were executed, the Supreme Court of South Dakota holds, is not admissible to change the obligation on the notes.

REPRESENTATIONS MAY BE RELIED ON

A savings bank holding an overdue note and mortgage which, in accordance with its business policy, it wanted to dispose of without foreclosing, sold them after a representation by its president that the mortgage embraced the whole of a certain lot, while the bank had released a portion thereof, the president, when he made the statement, and the bank's attorney, when he made the assignment, although well knowing, having "forgot and overlooked the fact of the release."

The Supreme Judicial Court of Massachusetts holds, in Shapira vs. Wildey Savings Bank, 100 Northeastern Reporter, 619, that the purchaser was entitled to a rescission of the assignment of the mortgage.

It was true that an examination of the records subsequent to the date of the mortgage which he bought would have disclosed the fact that the bank had released a portion of the lot, but that fact was peculiarly within the knowledge of the bank, and the court cannot say that he was culpably negligent in relying upon the statements of its president, in effect that the mortgage was the same as when it was executed.

UNAUTHORIZED TRANSACTIONS BINDING ON PARTIES

Banks, the Supreme Court of North Dakota says, in First National Bank of Westhope vs. Messner, 141 Northwestern Reporter, 999, are more and more coming to be looked upon as quasi public institutions and their solvency to be regarded as a matter of public interest. Actions which are brought by them to collect their loans and to realize upon their assets are for this reason looked upon as actions which are brought not merely for the benefit of the stockholders, but for the depositors also.

Such being the case, even though the officers of a national bank may make a contract beyond the authority of the bank, and may make a loan upon real estate security which is prohibited by the United States statutes, the courts have held that the sovereign can alone interfere, and that the debtor will not be allowed to assert the invalidity of the mortgage or of the transaction.

These rulings and considerations must also in logic apply where an officer or agent of the bank releases a debt for less than its face value and the bank seeks to hold him liable therefor. The unauthorized nature of the transaction can no more be pleaded by him than it could be by the original debtor.

BANK OFFICER ALSO ONE OF CORPORATE CUSTOMER

A treasurer of a trust company, who was also an officer of another corporation, made arrangements with the president of the latter corporation for the trust company to have its banking account. As he acted only for the trust company in the matter, the United States Circuit Court of Appeals, Eighth Circuit, holds, in Render vs. Arkansas Valley Trust Co., 196 Federal Reporter, 1, that the fact that he was also an officer of the other corporation was immaterial, and his knowledge of the agreement that he made that the funds of the other corporation should be paid out only in a certain way was chargeable to the trust company. The president of the other corporation could have simply told him not to pay out its moneys except upon the presentation of a particular form of check or order, and the instructions would have been binding.

MAY HOLD STOCK AS TRUSTEES

A gift, by will, of the income of certain shares of bank stock of a national bank to a named church society of a city, the Supreme Court of Nebraska holds, in re Douglass' Estate, 143 Northwestern Reporter, 299, is a donation to a public charity, and the officers of the bank, where they are designated for that purpose, may hold the title to the bank stock as trustees, and pay the dividends accruing to such stock to the church for religious purposes.

UNDER DOCTRINE OF PRIVILEGED COMMUNICATIONS

There is a certain privilege enjoyed by business men generally, in which bankers share, of answering in good faith inquiries about others, when made by those entitled to the information. Thus, in a case where a promissory note given to a company had been sent to a banker for collection, the attorney for the company applied to the banker for information as to the solvency of the makers of the note and was told that one of them was insolvent, that nothing could be collected from him, as the banker understood it; that it was a question with the people of the community whether the man was worth anything, and that the banks about there were all down on him.

The Appellate Court of Illinois holds that the statement made by the banker to the attorney was a privileged communication, so that to render the banker liable therefor it must appear that it was uttered in malice.

A communication made by a country banker to a mercantile house in the city in respect to the pecuniary responsibility of a customer of the house, whose note has been sent to the banker for collection, is privileged, the court says, and, in order to maintain an action for libel or slander against him, express malice must be shown, and cannot be inferred from the mere falsity of his statement.

This last statement is practically adopted from a decision in a New York case where a banker, by way of explaining his delay for a week after its maturity to remit the proceeds of a note sent to him for collection, appended to his letter, covering the remittance, the words: "Confidential. Had to hold over for a few days for the accommodation of the makers."

In that case it was held that the relation existing between the banker and the owners of the note rendered his communication to them a privileged one, and required proof of actual malice to sustain an action for libel.

But the highly confidential character of banking transactions generally does not give to the communications made, or information acquired therein, any special legal sanctity, like that recognized in the relations of attorney and client, physician and patient, husband and wife.

A leading case on the subject is an English one, decided in 1826. In it a bank clerk was asked what the balance of one of the parties was on a given day. It was ruled that it was not a confidential communication; that he was bound to answer the question; or, as the headnote of the case has it: The banker of one of the parties in a cause is bound to answer what such

party's balance was on a given day, as it is not a privileged communication.

WHO MAY MAKE AFFIDAVITS FOR ATTACHMENTS

Where a state statute requires affidavits upon which attachments are issued to be made by the plaintiff, his agent, or attorney, it is not enough, the Supreme Court of Appeals of Virginia holds, that an affidavit is made by a vice president of a bank, signed with his name followed by the words "vice president," or that it be made by a director who simply signs his name followed by the word "director."

The correct practice requires the affidavit to aver that the maker thereof is the plaintiff, his agent, or attorney, according to the fact.

In the case of a corporation, it can appoint as many agents as it pleases, with specific authority to make such affidavits. But the court cannot say, as a matter of law, in the absence of averment, that the term "vice president" or "director" necessarily imports the relation of agency between such officer and his corporation, within the intendment of the statute.

ACKNOWLEDGMENT TAKEN BY VICE PRESIDENT

The Supreme Court of Florida holds that, while a grantee in a deed, or a party interested therein, cannot take an acknowledgment of the deed, in the absence of any showing that a vice president of a bank was required to be a stockholder, it could not be assumed that a vice president was also a stockholder, and, without such assumption, it could not be said that he was interested in a mortgage to the bank, and that his certificate of acknowledgment thereto was for that reason void. What the decision would have been if it had been shown that he was a stockholder, the court refrains from intimating.

VICE PRESIDENT CHARACTERIZING MORTGAGE BONDS

The Court of Appeals of New York holds, in Davidge vs. Guardian Trust Co., 96 Northeastern Reporter, 751, that there is no presumption of authority in a vice president of a trust company simply made trustee of a mortgage and certifying the identity of the bonds secured to make any representation as to whether they are first-mortgage bonds or not.

NOT DUTY TO SEE TO NOTICES OF DISHONOR

The fact that one of the indorsers of notes given by a company to a bank is a director in and president of the company, and vice president of the bank, and has actual knowledge the day

before the notes mature that they will mature on the next day, and that the company has no funds with which to pay them, does not make it his duty as an officer of the bank to see to it that notice of the dishonor of the paper is given to the parties entitled to notice so that his failure to do it will prevent his denying his liability on the paper.

So holds the Court of Appeals of Kentucky, which says, in First National Bank of Louisville vs. Bickel, 156 Southwestern Reporter, 856, that it does not know of any authority holding that the vice president of a bank is, by virtue of his office alone, charged with the duty of seeing that notice of the dishonor of paper is given to the person entitled thereto, or liable in any manner if he fails to do so, though, of course, any officer or employe of a bank may be charged by resolution of the bank, or by its habit and custom of dealing, with the duty of protesting paper or giving notice of its dishonor.

OFFICERS ENTITLED TO NOTICES OF DISHONOR

Nor did the fact that the indorser referred to was an officer of the bank relieve the bank from the necessity of giving him notice. He signed the paper, not as an officer of the bank, but as an officer of another corporation borrowing money from the bank, and his rights and liability on the paper were precisely the same as those of the other parties who similarly signed it.

The statute, requiring that notice of dishonor shall be given, is peremptory, and all persons entitled to the notice are released from liability unless it is given, although they may be connected with the bank, whose duty it is to give notice, as officers or in some other capacity, with the exception that the bank officer whose duty it is to give notice will, of course, not be allowed to plead want of notice as a defense to a suit by the bank against him.

GUARANTY BY OFFICERS OF BANK OF OVERDRAFT

A guaranty by parties interested in a company which states that they guarantee an overdraft to a bank to the extent of $4,500, all the receipts of the company to be deposited in said bank until the above is extinguished, the Court of Appeals of Kentucky holds, in First National Bank of Louisville vs. Bickel, 156 Southwestern Reporter, 859, is to be construed as a guaranty of the payment of an existing overdraft only, the words of the guaranty excluding the construction of its being intended to be a continuing guaranty. Furthermore, the court says that it is unable to perceive how the fact that some of the signers of such a guaranty were officers of the bank could have the effect of preventing them from denying that the paper upon which it was sought to hold them liable was a continuing guaranty. In signing the paper they were not acting as officers of the bank, but were dealing with it as customers, and the relation they held with the bank did not in any manner affect their rights as signers of the paper.

PRETENDING TO BE SUBSCRIBERS FOR STOCK

Officers of a national bank, according to a United States Court of Appeals, may not hold themselves out to the comptroller of the currency, the bank examiners and the business public as original subscribers for and holders of a part of its capital stock, which they have never paid for, and yet escape liability on obligations given for such stock through a secret agreement amongst the officers that the stock shall be considered as belonging to the bank, and not to those to whom issued.

LIABILITIES OF OFFICERS OF INSOLVENT BANKS

An officer of a bank who has sold his stock and tendered his resignation, the Supreme Court of Appeals of West Virginia holds, in Benedum vs. First Citizens' Bank, 78 Southeastern Reporter, 656, is nevertheless an officer in fact, if his resignation has not been accepted, nor the vacancy in the office filled, and his acts and the surrounding circumstances prove he continued to act for the bank and to participate in the management and control of its affairs.

An officer is liable for withdrawal from an insolvent bank, after knowledge of its insolvency, of deposits made and controlled by him, though he is not sole owner thereof.

Transformation by an officer of a failing bank of its certificates of deposit held by him into a well secured debt held by the bank by surrender of the certificates in part payment of the debt and taking a new note from the debtor secured and payable to himself constitutes a preference, the benefit of which must be surrendered in the settlement of the affairs of the bank.

Officers of a bank participating in misappropriations and transactions occasioning losses are jointly and severally liable for such misappropriations and losses, and there may be a separate decree against any of them.

But an officer of an insolvent bank, held liable for all of his indebtedness to the bank and losses occasioned by his misconduct or neglect of duty, required to restore all of his misappropriations, and deprived of the benefit of all preferences he has obtained, so far as claims against him on such accounts are passed upon in the decree, cannot properly be denied participation in the distribution of the assets on account of his deposits and other claims against the bank. In such a case his entire

liability should be ascertained and decreed against him, and then he should be allowed to participate in the distribution, on payment or collection of a sufficient amount to insure ratable distribution among all creditors, including himself.

A creditor of an insolvent bank, though an officer and held liable for losses, misappropriations, and preferences, may set off against his deposits liability on his individual debts and notes and on his joint and several notes, but not his liability as surety or indorser, nor as a joint debtor.

OFFICERS' LIABILITIES AS ASSETS

The liability of a bank's officers for gross neglect of duty and willful mismanagement of its affairs, and the double liability of stockholders, the Supreme Court of Appeals of West Virginia holds, in Clark vs. Bank of Union, 78 Southeastern Reporter, 785, are both assets in the hands of the trustee of an insolvent bank, to be administered for the benefit of its creditors.

It is proper to administer both of these assets in a suit brought by the trustee against the bank, its stockholders and creditors. If the trustee does not seek to enforce the officers' liability, the defendant stockholders may do so by answers in the nature of cross-bills.

In such a suit, to which all the parties interested are parties, in order that the court may do complete equity, the extent of the officers' liability should be ascertained before assessing any portion of the double liability upon the stockholders.

LIABILITY FOR RECEPTION OF DEPOSITS

The Supreme Court of South Dakota holds, in State vs. Stewart, 139 Northwestern Reporter, 371, that, under the statute of that state, which makes it an offense for any banker, bank president, director, manager, cashier, other officer, agent, clerk, or employe to receive or assent to the reception of any deposit after he shall have had knowledge of the fact that such banker or bank is insolvent, the officer who accepts the deposit and the officer who assents to the act, with knowledge of the fact that the bank is insolvent, are alike and equally guilty of a single offense.

To prove the crime, it is essential to show that some officer, agent, clerk, or employe of the bank received a deposit with knowledge of insolvency.

To prove another officer of the same bank guilty of the same crime, it is only necessary to show the same act of the officer, clerk, or employe in receiving the deposit and the assent of the other officer to the same act with knowledge of insolvency.

An Idaho statute provides that the owners or officers of any bank who shall fraudulently and with intent to cheat and defraud any person, receive any deposit knowing that such bank is insolvent, shall be deemed guilty of a felony.

The Supreme Court of Idaho holds, in the case of State vs. Cramer, 119 Pacific Reporter, 30, that it was intended to make all the officers who have knowledge of the condition of the bank responsible for the acts of employes thereof in receiving deposits.

So where, for example, the vice president and business manager of a bank, with full knowledge that his banking institution is insolvent and will not be able to meet its obligations and repay its depositors in the ordinary and due course of business, permits or consents to such banking institution continuing to receive deposits through its regular employes, he is criminally liable.

Where an employe of a bank receives money for deposit outside of the bank, and it does not reach the bank, it is held in Fidelity & Deposit Co. vs. Colby, 132 New York Supplement, 20, that he is the agent of the person delivering to him the money, and not of the bank.

ENTRIES AND REPORTS

It is not the purpose of the law to punish any officer of a national bank, who, through mistake, makes an entry in the books of the bank which he believes to be true, although in fact it may be false. In order to make the act criminal, the United States Circuit Court in Florida says, it must be committed with intent to deceive an agent of the comptroller of the currency. The offense may be committed personally, or by direction.

An officer of a bank in reporting the highest amount of its indebtedness to any one, the Court of Appeals of Kentucky holds, may disregard a note previously both discounted and by the bank indorsed and rediscounted to another, it not being technically an indebtedness of the bank although the latter may ultimately have to pay it.

MUST PRODUCE RECORDS

The Criminal Court of Appeals of Oklahoma holds, in Burnett vs. State, 129 Pacific Reporter, 1110, that, under the act "creating a state banking board, establishing a depositors' guaranty fund to insure depositors against loss when the bank becomes insolvent," etc., all of the books, records, and papers of the failed or insolvent bank taken over by the bank commissioner are public records, and become the property of the state.

The privilege against self-crimination afforded by the provision of the bill of rights, "that no person shall be compelled

to give evidence which will tend to incriminate him, except as in this constitution specifically provided," does not protect the officers of an insolvent state bank in resisting the compulsory production of its books, records, and papers because such documents may tend to incriminate them.

BANK CLERKS SIGNING BLANKS FOR SUPERIORS

The liability of a bank clerk sued for $19,584 on account of assessments on stock of an insolvent corporation which his bank had owned and had transferred to his name turned on whether or not he knew that the stock stood in his name. He denied knowledge of the transfer to him, or having ever received the stock certificates.

But there were two blank printed forms of proxy to vote at annual meetings which had been signed by him, and the trial judge held that the signing of these proxies put him in a position where it would be impossible for him to put up the plea of ignorance, and directed a verdict against him.

That, however, the United States Circuit Court of Appeals holds, was error, and the clerk was entitled to a new trial, because the question of knowledge was manifestly for the determination of the jury.

The clerk suggested that he might have signed the proxies without knowing what he was signing, and the court does not find anything inherently impossible in the proposition that bank clerks are sometimes so careless, negligent, and unbusinesslike as to sign some blank, printed form, which their superiors may ask them to sign, without concerning themselves as to its contents.

END OF
TITLE